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SAN FRANCISCO PORT COMMISSION

DOCUMENTS DEPT.

REGULAR MEETING

4:00 P.M., TUESDAY, MARCH 11, 2003

BAYSIDE CONFERENCE ROOM

PIER 1, SAN FRANCISCO, CA 94111

MAR - 7 2003

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The Port Commission Agenda as well as Staff Reports/Explanatory Documents available to the public and provided to the Commission are posted on the Port's Website at www.sfport.com.

AGENDA

1. ROLL CALL

2. APPROVAL OF MINUTES - February 27, 2003 Regular Meeting

3. EXECUTIVE

A. Executive Director's Report

- Ferry Building Grand Opening – March 21, 2003 @ 11 a.m.

4. REAL ESTATE

- #### A. Request for approval of proposed Assignment and Assumption of Lease No. 12392 and 12460 (the Lapis Restaurant) from Bistro Z, LLC to "Newco," a to-be-formed California corporation, and Modifications to Said Leases. (Resolution No. 03-19)

5. PLANNING & DEVELOPMENT

- #### A. Request for adoption of Mitigated Negative Declaration and Mitigation Monitoring Program; Approval of Lease Disposition and Development Agreement and Lease with San Francisco Waterfront Partners, LLC for the development and historic rehabilitation of Piers 1½, 3 & 5 located between Washington Street and Broadway; Approval of Schematic Drawings; and Approval of Related Amendments to the *Waterfront Land Use Plan*. (Resolution No. 03-17)

6. NEW BUSINESS/PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period. It is strongly recommended that public comments be submitted in writing so they can be

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or visit our website at <http://www.nypl.org>

ABOUT THE NYPL

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and dissemination of knowledge

in all forms and media

for the benefit of the public

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through its libraries and programs

and its commitment to the

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and the future

and the past

and the present

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distributed to the Commissioners for their review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

7. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER (Discussion Item)

- a. Discuss existing litigation matter pursuant to Sections (a) and (d) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case). (Discussion Item & Action Item).
- Employers Insurance of Wausau v. LTM Construction Co. Inc., Keith V. Lennon, Cecile Lennon, City and County of San Francisco;
San Francisco Superior Court Case No. 412640, filed September 17, 2002.

Discussion and approval of settlement of litigation seeking foreclosure of stop notice and declaratory relief, relating to the Port construction contract No. 2665, Pier 48 Interior Fire Damage Repair. Proposed settlement of litigation upon terms which include Port's payment of \$52,703 in contract retention funds to plaintiff-surety, in exchange for dismissal and full release of litigation, and plaintiff's agreement to indemnify the Port/City from all claims of the prime contractor, subcontractors, and the Internal Revenue Service, to the extent of such payment. (Resolution No. 03-18.)

A copy of the proposed litigation settlement agreement is available for inspection with the Commission Secretary for the Port, pursuant to San Francisco Administrative Code Section 67.12(b)(3).

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

*This session is closed to any non-City/Port representative. **

- a. Property: Pier 28- ½
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Prospective Bidder(s)

Under Negotiation: ____ Price ____ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding the selection of candidate for Pier 28-½.

- b. Property: Pier 29- ½
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Fascination Consumers Enterprises, Ltd.: Sam Conti
- Under Negotiation: ___ Price ___ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 29-½ .
- c. Property: Bryant Street Pier
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*San Francisco Cruise Terminal LLC: Glen Elkington
- Under Negotiation: ___ Price ___ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at the Bryant Street Pier.
- d. Property: Piers 19/23
Person Negotiating: Port: Douglas F. Wong, Executive Director
*Big C Traders: Raymond Lynch
- Under Negotiation: ___ Price ___ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Piers 19/23.
- e. Property: Pier 70
Person Negotiating: Port: Peter Dailey, Maritime Director
*San Francisco Drydock: Joe O'Rourke, President
- Under Negotiation: ___ Price ___ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Pier 70.
- f. Property: Pier 80
Person Negotiating: Port: Peter Dailey, Maritime Director
*Marine Terminals Corporation: James Wiltshire
- Under Negotiation: ___ Price ___ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Pier 80.

8. RECONVENE IN OPEN SESSION

- A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12
- B. Vote in open session on whether to disclose any or executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

Vote on whether to approve proposed settlement of litigation entitled Employers Insurance of Wausau v. LTM Construction Co., Inc. Keith V. Lennon, Cecile Lennon, City and County of San Francisco (Also listed above, Closed Session, Item No. (1)a.) (Resolution No. 03-18.)

9. ADJOURNMENT

MARCH 2003
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
March 11	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
March 25	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1

NOTES:

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 4:00 p.m., unless otherwise noticed, in the Bayside Conference Room @ Pier 1. Contact Amy Quesada at 274-0406. *The Commission Agenda and staff reports are also posted on the Port's Website @ www.sfport.com.*

The Environmental Quality Advisory Committee (EQAC) meets regularly on the fourth Thursday of the month at 9:00 a.m. at Scoma's Restaurant, Pier 47 @ Fisherman's Wharf. Contact Jay Ach @ 274-0562.

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Kirk Bennett @ 274-0545.

The Maritime Commerce Advisory Committee (MCAC) meets on a bi-monthly basis, on the third Thursday of the month, from 11:30 a.m. to 1:30 p.m. @ Pier 1. Contact Jill Rodby @ 274-0519.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:30 to 7:30 p.m. at the Mission Bay Visitor Center (255 Channel Street). Please contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 – 8th Street between Irvin and Hooper. Contact Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Please contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at www.sfport.com.

ACCESSIBLE MEETING INFORMATION

Getting to Pier 1:

Pier 1 on the Embarcadero, at the foot of Washington St. The Embarcadero Station is the closest BART and MUNI Metro stop, located below Market St. at Drumm & Spear Streets. The nearest F-Line streetcar stop is on the Embarcadero at Washington St. MUNI bus lines serving the Pier 1 area are the 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:

- A) 1 space in the surface lot on the west side of the Embarcadero at Washington St.
- B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
- C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking.

Metered street parking is available on the Embarcadero, Washington St. and Drumm St.

Pier 1:

The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Commission Bayside meeting room. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Commission meeting room.

Accessible meeting information policy:

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact Nita Mizushima, Chief Harbor Engineer, at 274-0559. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, please contact Donna Hall, Administrator at 554-7724; fax 554-5163; e-mail address Donna_Hall@ci.sf.ca.us; City Hall, Room 244, One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Ordinance Task Force, the San Francisco Public Library and on the City's Website at www.ci.sf.ca.us/bdsupvrs/sunshine.

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.



MEMORANDUM

March 6, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams

FROM: Douglas F. Wong *Al Wong*
Executive Director

SUBJECT: Proposed Assignment and Assumption of Lease No. 12392 and 12460 (the Lapis Restaurant) from Bistro Z, LLC to "Newco", a to-be-formed California corporation, and Modifications to Said Leases.

DIRECTOR'S RECOMMENDATION: Authorize the Executive Director To Negotiate and Execute an Assignment, Assumption And Consent Agreement of Lease Nos. L-12392 and L-12460, an Amendment to Lease No. L-12392, and a Termination Agreement for L-12460.

Background:

For almost forty years, the Papadakis family, through their wholly-owned California corporation, Peer Inn, Inc., operated the Peer Inn Restaurant at Pier 33. The Port started the tenancy on a month-to-month lease and then granted a three-year lease commencing in 1994. In 1996 and 1997, the Port Commission approved entering into two longer term leases with Peer Inn, Inc.: Lease Agreement L-12392, dated December 11, 1996, and Lease Agreement L-12460, dated April 28, 1997 (collectively, the "Leases"). The Leases total 6,772 square feet of land and improvements located at Pier 33. See attached Exhibit A. The term of the Leases was nine years, commencing November 1997.

On October 13, 1999, pursuant to a judgment of foreclosure by the United States Bankruptcy Court for the Northern District of California, dated April 14, 1999, City Building, Inc., a California corporation, foreclosed on the Leases and all of Peer Inn's rights in the leasehold estates, and assigned the Leases to Bistro Z, LLC, a California limited liability company ("Bistro Z") through an Assumption, Assignment, Consent to Assignment and Extension Agreement dated October 13, 1999. The Port Commission consented to such assignment and approved lease amendments extending both Leases to October 31, 2009.

This Print Covers Calendar Item No. 4A

The Leases currently provide for a total minimum monthly rent of \$13,656.34 subject to annual CPI adjustments. In addition, the tenant pays percentage rent of 7% of gross revenues from restaurant and bar sales and 9% of gross revenues from sales of retail merchandise and take-out food and beverages, to the extent such aggregate amounts exceed minimum rent.

Due to the current economic conditions and its current business strategy targeted towards the high end of the restaurant market, Lapis has been experiencing declining revenues. Bistro Z now desires form a strategic alliance with Butterfly, an existing operator presently located on Mission Street in SOMA. This alliance will be structured as a new entity based on a business plan for a lower price point, with cuisine and entertainment which appeals to a greater audience, evidenced by Butterfly's success to date, as discussed below. To that effect, Bistro Z has requested approval by the Port to assign all of its rights, title and interest to the Leases to the to-be-formed entity ("Newco"). Newco will be a California corporation, the ownership of which will consist of individual members of Butterfly, LLC and the owners of Bistro Z, LLC, among others. Butterfly LLC is the ownership name of Butterfly Restaurant, currently located at 1710 Mission Street, San Francisco. Newco proposes to relocate the successful Butterfly Restaurant from its Mission Street location to the Pier 33 location currently occupied by Lapis Restaurant.

Butterfly's Executive Chef, Robert Lam, took over ownership of Butterfly in 2001. Under his leadership, Butterfly has become a destination restaurant and gathering place which has stayed consistently popular and full despite the current state of the economy. Butterfly serves pan-Asian, "Asian within Asian", cuisine—"a fusion of flavors from Vietnamese, Korean, Japanese, Taiwanese and Chinese pantries"--which is reasonably priced and quality driven, along with live music, DJ's, and an energetic bar scene.

Lam currently holds 75% ownership in the existing Butterfly LLC. Norman and Evelyn Kiken and Norm Chow, are the major investors in the remaining 25% of Butterfly LLC and also function actively as consultants on all projects undertaken by the restaurant. Resumes of these principal investors of Butterfly LLC are attached as Exhibit B.

On February 2, 2003, Robert Lam was noted by the S.F. Chronicle as one of The Chronicle's 2003 Rising Stars, who "will soon be stars on the national stage....The group's alumnae include chefs such as Michael Mina, Traci Des Jardins and Loretta Keller, whose talent, creativity and skills have put them at the top of the dining establishment...shaking up culinary expectations and setting trends across the country". City Search.Com wrote of Butterfly: "This jazzy supperclub takes flight with Asian-inspired dishes and a cheery attitude...This snazzy Mission enclave has risen from the tech-stock crash with a sparkling array of food and music...the atmosphere is friendly—even romantic...Chef Robert Lam infuses his Asian-fusion small plates with enough substance to provide rare comfort in these penny-pinching times."

Robert Lam has shown himself to be professional, disciplined and passionate in his endeavors, which has produced great success. His ability to simultaneously apply his culinary skills and business operations acumen have resulted in the successful turnaround of two restaurants: Brannan's, located in Calistoga, and Butterfly, in San Francisco. Lam graduated at the top of his class at the Culinary Institute of America (CIA) in New York and was asked to do a fellowship at Greystone of the CIA in St. Helena in the Napa Valley.

Following his fellowship at CIA, Lam took a job as Executive Chef at Brannan's and over the course of the next three years, transformed the business, increasing gross revenues from \$850,000 to \$2.9 million. It was during this time that he met Norman Kiken, who has since then been his business advisor and investor.

Lam acquired the distressed, in debt, and mismanaged Butterfly Restaurant in mid-2001--a tough economic year for restaurants in San Francisco due to the decline in the high tech and stock market. At the time of Lam's acquisition, though Butterfly's gross sales were \$2.1 million, the previous ownership had lost almost \$500,000 due to operational and mismanagement issues. During Lam's first year, he concentrated on rebuilding the customer base that had been in decline, due to uneven food appeal and quality, and completely restructured business operations. Lam's Butterfly broke even in its first year, after paying off \$150,000 in outstanding debt and \$90,000 in leased assets he inherited from the prior owners. Butterfly is now an extremely popular, well-run, restaurant which has developed a practically cultlike following among young professionals, artistic locals, and the established San Franciscan "foodie" community.

The relocation of Butterfly will require a period of time to physically relocate the restaurant operation, hire and train staff, perform minor renovations, and re-market the restaurant in its new upgraded location. To accommodate this and provide a firm foundation from which to launch the new Butterfly Restaurant, Newco proposes to modify several existing lease terms and to add new terms.

Port staff, Newco and Bistro Z have negotiated the terms of a proposed Assignment, Assumption and Consent Agreement, pursuant to which Bistro Z will assign and Newco will assume all of the rights, title and interest in the Leases. Port staff and Newco have also negotiated an Amendment to Lease L-12392 and a Termination of Lease L-12460. The salient of terms of these agreements are provided below.

Proposed Assignment, Assumption and Consent Agreement:

Assignor: Bistro Z LLC, a California limited liability company, dba "Lapis Restaurant"

Assignee: Newco, a to-be-formed California corporation, comprised of principal members of Butterfly LLC and of Bistro Z, LLC. Its Managing Executive will be Robert Lam.

Effective

Date: Upon approval by the S.F. Port Commission and full execution and delivery of the document by the parties.

Release of

Assignor: Bistro Z will be fully released from the obligations under the Leases, except for the existing guaranty obligations of the principal members (see below) as of the effective date of the Agreement.

Assumption

By Assignee: Newco will fully assume the obligations under the Leases as of the effective date of the Agreement.

Security
Deposit and
Outstanding

Rent Balance: Bistro Z currently has an outstanding rent balance of \$44,413. Bistro Z has agreed to apply its security deposit held by the Port, which totals \$27,370.21, against its outstanding rent balance of \$44,413. Bistro Z will waive any rights to or claims it has against such deposit. The remainder, \$17,042.79, will be credited against the \$97,500 rent credit balance held by Bistro Z (as a result of Settlement Agreement, dated June 25, 2002) which balance will be reduced to \$80,457.21 (see Rent Credits below).

Proposed Amendment to Lease L-12392:

Premises: Premises to be expanded to include an additional 3,234 s.f. of shed space (premises of Lease L-12460) at Pier 33. Total premises to be 6,772 square feet. See Exhibit C.

Newco shall accept Premises in "as is" condition. Without limitation, Newco specifically waives any right to pursue legal remedies or to receive compensation from the Port as a result of any issues noted in the Settlement and Release Agreement the Port executed with Bistro Z, LLC dated June 25, 2002, any defaults by Bistro Z under the Leases, any conditions or defects of the Premises whether known or unknown, or for any other reason. Newco shall assume any existing obligations of Bistro Z, including the unsatisfied conditions existing under the existing BCDC permit related to the Lapis Restaurant and/or Premises.

Use: Full service restaurant, to include music and live or DJ entertainment as complimentary to the restaurant.

Term: To total 9.5 years, as calculated from 3/1/03; extension of current lease term by approximately 3 years.

Monthly
Base Rent: \$7,000 per month, commencing March 1, 2003, subject to annual CPI adjustments.

Percentage
Rent: 5% of Gross Revenues from Restaurant and Bar Sales, Year 1
6% of Gross Revenues from Restaurant and Bar Sales, Year 2
7% of Gross Revenues from Restaurant and Bar Sales, Years 3-9.5
9% of Retail Merchandise and Take-Out Food and Beverage Sales

Rent
Credits: Rent credits available as a result of Port's Settlement and Release Agreement with Bistro Z, LLC, dated June 25, 2002 to be transferred to new entity. Net credits will total \$80,457.21, comprised of the existing rent credit balance of \$97,500 less the outstanding rent due from Bistro Z of \$44,617 which outstanding rent will be reduced by application of Bistro Z's security deposit (see above) of \$27,370.21. Rent credits will be available to Newco at a rate of \$7,000 per month

commencing as of the effective date of the Assignment, Assumption and Consent Agreement. Rent Credits will be applied to Monthly Base Rent until exhausted.

Transition

Period: Commencing 3/1/03, Port will approve the temporary closing of the restaurant to accommodate transition from Lapis into the new Butterfly Restaurant. For the period commencing 3/1/03 until the effective date of the Assignment, Assumption and Consent Agreement, the Port will receive no rent from either Assignor or Assignee. Upon the effective date, Newco shall have 90 days to complete transition for renovation, staff hiring and training, and marketing the new restaurant. Rent credits will be applied during this 90 day transition period, as discussed above.

Construction

Of Deck: Newco will be permitted to construct a deck to the rear of the Premises. The Port agrees to apply as co-applicant with Assignee to BCDC for approval of construction of a new deck to the rear of the restaurant. Should the deck be approved by BCDC, and constructed by Newco, the Port to provide rent credits up to a maximum of \$150,000, to be taken against no less than 50% of Percentage Rent on a monthly basis per the terms of the Port's Rent Credit Policy, and Deck area will be added to Lease L-12392 Premises. Newco acknowledges that Bistro Z is in default under the existing BCDC permit and that the Port makes no representations or warranties about Newco's ability to obtain BCDC approval for its proposed new deck.

Guaranty: Guaranty to be provided based on financial review of the capitalization of Newco and creditworthiness of its investors, in a form and amount deemed appropriate by the Executive Director. Currently, the full performance of all the terms and conditions of the leases are guaranteed by the principal members of Bistro Z, LLC. This existing guaranty shall continue unless otherwise deemed necessary by the Executive Director after further review of the requisite financial information.

Proposed Termination of Lease L-12460:

Lease L-12460 consists of 3,234 square feet of shed space in Pier 33. Its premises are adjacent to, and over the years has become operationally a part of, the Lease L-12392 premises which house the Bistro Z/Lapis Restaurant. The shed space in Lease L-12460 is utilized as the kitchen area for the restaurant. Because of its proximity and integral necessity to restaurant operations, Port staff proposes to incorporate these premises into the primary restaurant lease, L-12392.

Business Plan and Projections:

As described above, Butterfly will reproduce its successful business model at the Pier 33 location, serving excellent pan-Asian cuisine which is reasonably priced and quality driven, along with live music, DJ's, and an energetic bar ambience.

Butterfly's projections for the Pier 33 location are as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
Gross Sales Net of Tax	\$1,610,000	\$1,965,000	\$2,064,000	\$2,167,000	\$2,275,000
Sales Per square foot	\$238	\$290	\$305	\$320	\$336

Based on Butterfly's current sales at its Mission Street location, these projected sales figures are well within the realistic projection range. Butterfly's current location seats 100, which compares equally with the Lapis location which currently seats 97. Butterfly's sales projections also compare favorably and conservatively with the Port's experience with similarly sized, full-service, successful restaurants in the Northern Waterfront. As comparison, retail sales for the last 12 months for Fog City Diner and the Pier 23 Café are \$3,453,395 and \$2,818,999, resulting in sales per square foot of \$453 and \$583, respectively. Rent to the Port, based on Butterfly's conservative estimates, is expected to reach almost \$150,000 per year within the first three years of Butterfly's operation at Pier 33. This compares favorably with Lapis' performance over the past three years.

Newco plans to invest approximately \$325,000 in the new Butterfly venture at Pier 33. This capital will be used to acquire the assets of BistroZ/Lapis Restaurant, fund minor renovations, and hire and train staff, with the balance remaining as an operating reserve fund.

Conclusion:

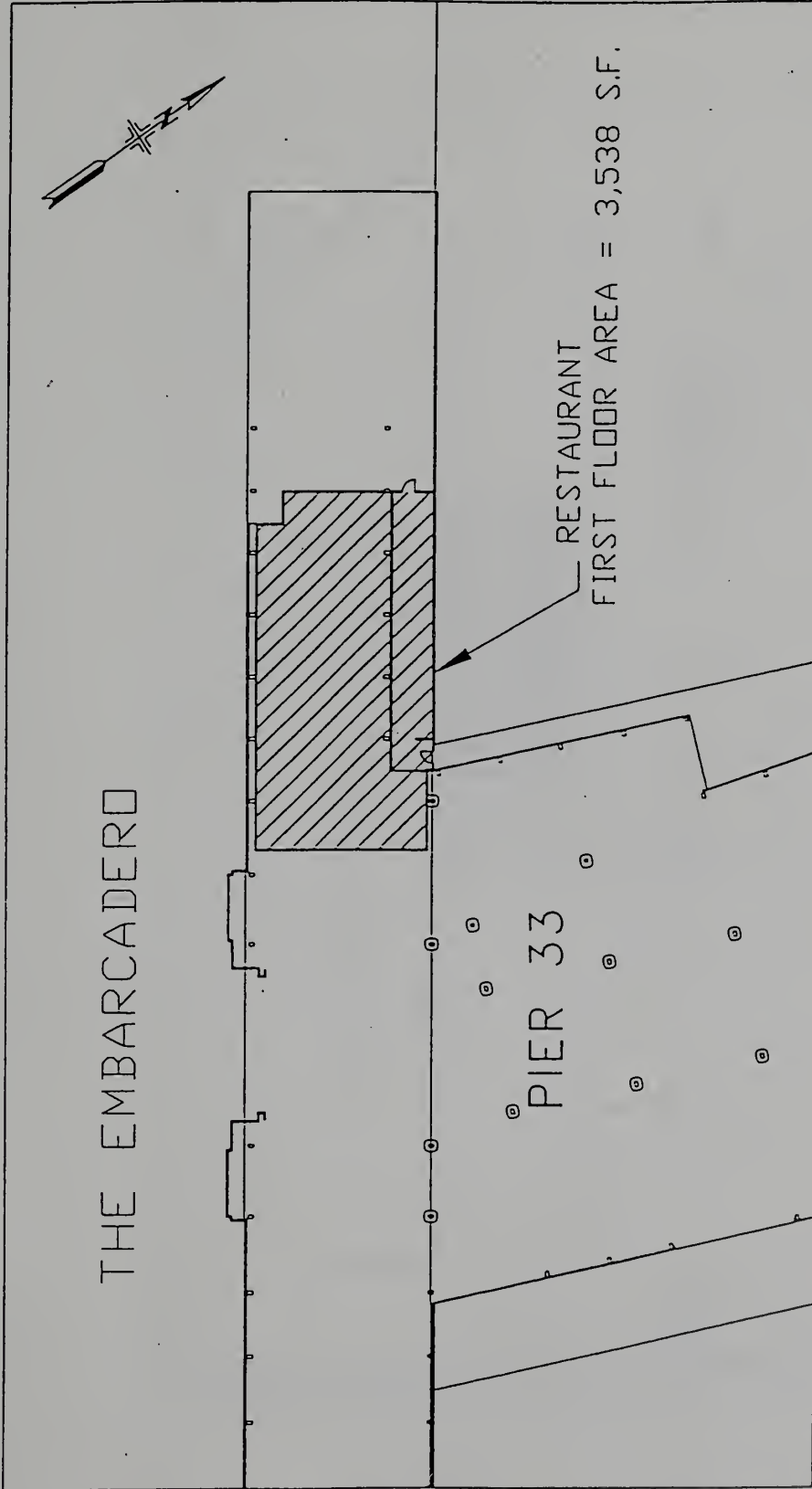
Robert Lam has a proven history of professional, operational and business acumen which has proved successful in transforming troubled restaurants into valuable restaurant assets. Through Lam's culinary accolades and business expertise, Butterfly has re-emerged, under his leadership, to become a popular destination restaurant and bar. Port Staff believes that Lam and his partners have the creative culinary skills, professional qualities and business sense, and are financially capable, to assume all of the obligations under the terms of the Leases, as negotiated, and to transition Butterfly Restaurant successfully to the Port's Pier 33 location.

The Port would be well served to enhance the Northern Waterfront with a young, energetic "Rising Star" who has created a very popular, full service restaurant concept and entertainment experience with a loyal San Francisco following. At its new Pier 33 location, Port Staff believes that Butterfly will continue to be a destination restaurant and bar for its loyal locals as well as others--from San Francisco and the Bay Area residents to tourists and other visitors.

Recommendation:

Port Staff recommends that the Port Commission authorize the Executive Director to negotiate and execute (i) an Assignment, Assumption and Consent Agreement of Lease Nos. L-12392 and L-12460, with Bistro Z and Newco; (ii) an Amendment to Lease No. L-12392 with Newco; and (iii) a Termination Agreement for L-12460 with Newco, in forms substantially consistent with the terms and conditions outlined in this Staff Report and Resolution No. 03-19 and as approved by the City Attorney.

THE EMBARCADERO



THE PREMISES

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO

TENANT:
PEER INN, INC.

LEASE NO.

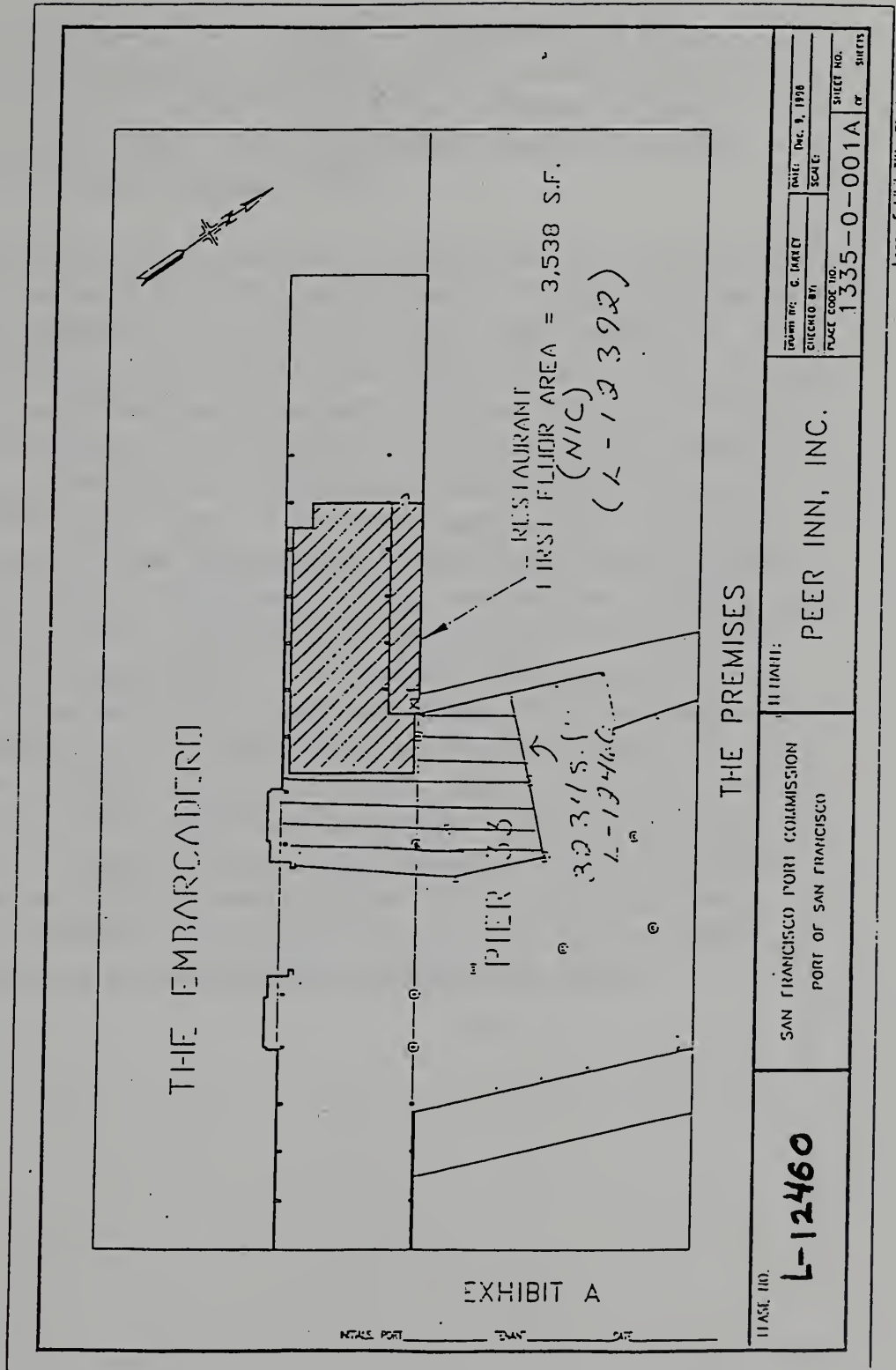
L-12392

DRAWN BY: C. DUDLEY	DATE: Dec. 9, 1996
CHECKED BY:	SCALE:
PLACE CODE NO.	SHEET NO.
1335-0-001A	OF SHEETS

INITIALS: PORT W TENANT RV DATE 12/16/90

EXHIBIT A

INITIALS: Port *[Signature]* Tenant *[Signature]*
 EXHIBIT A



PLANS NO. L-12460	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO	TITLE: PEER INN, INC.	DRAWN BY: G. JARLEY CHECKED BY:	DATE: DEC. 3, 1978 SCALE:	SHEET NO. 1335-0-001A	OF SHEETS
			PLATE CODE NO.			

EXHIBIT A

ROBERT LAM, Executive Chef

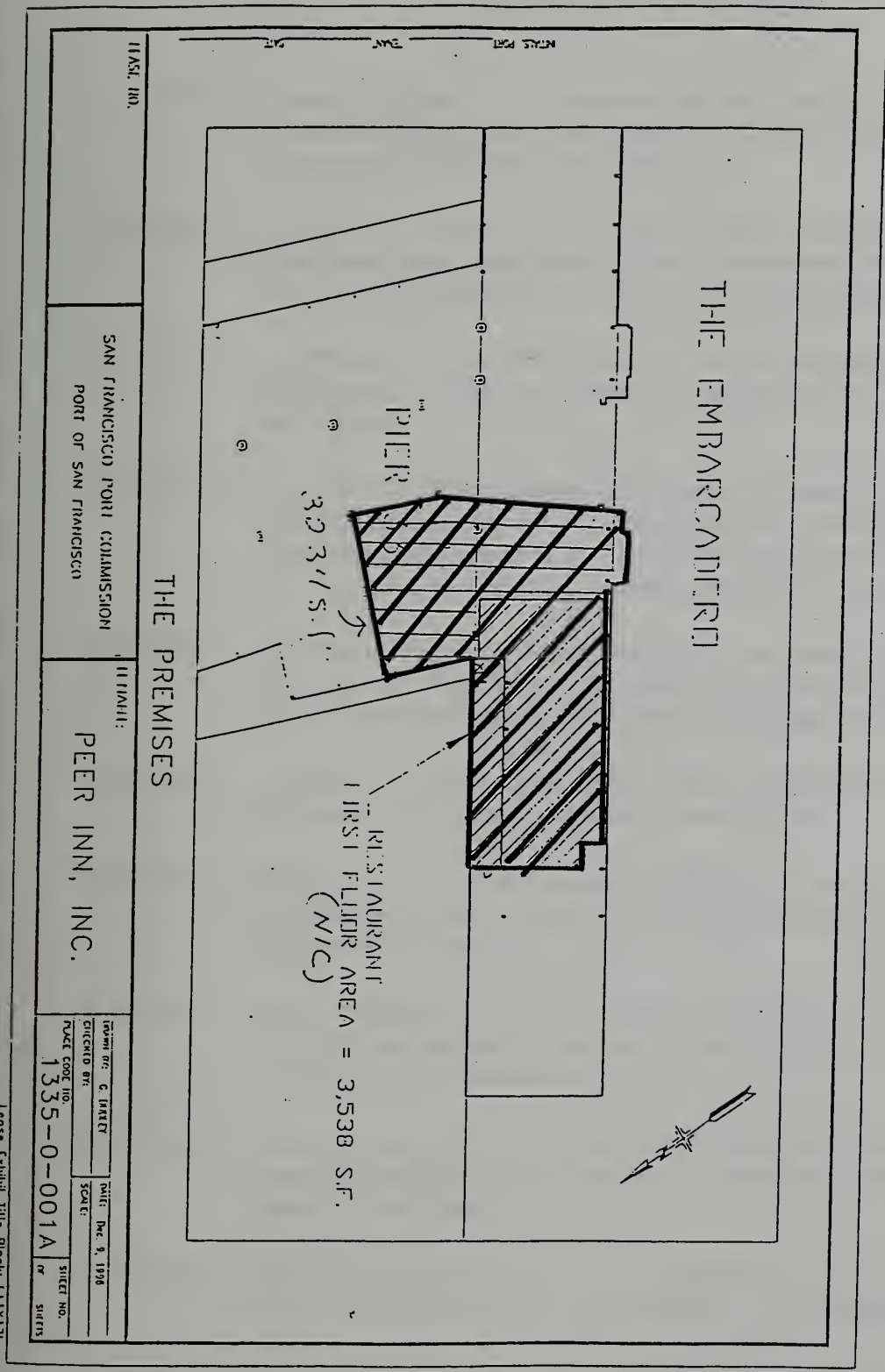
Rob was Born in Saigon, Vietnam and immigrated to the US in 1975 living in Orange County, California. He spent most of childhood from the age of 11 to 18 working in his mother's Vietnamese restaurant in Garden Grove. The restaurant was called Vien Dong (Further East) and was in business for over 18 years (Sold August, 2002).

In 1990 Rob moved to San Francisco to attend the University of San Francisco, where he earned a B.A. Degree in History. During that time he worked as a stager (apprentice) at Jeremiah Towers' Stars Restaurant. He then moved to New York to attend the Culinary Institute of America. Upon graduation, Rob accepted a fellowship position with the CIA in St. Helena at Greystone. Here he worked at the campus for 3 years both in the restaurant and the classrooms. This degree required him to take at least 4 classes a quarter and write a final thesis paper. Upon receiving the fellowship degree, he took a job as Executive Chef at Brannan's in Calistoga where hespent 3 years transforming the business and driving gross revenues from \$850k a year to over \$2.9 million a year. His most recent success has been Butterfly, which he took over in August 2001. Rob assumed the management and ownership of the restaurant with the aid of Norm Kiken. Prior to being taken over by new ownership, Butterfly was in distress, losing \$480k in it's first year of business even though sales exceeded \$2.1 million. After one year of operations under this new team, they have been able to pay off the \$150k of debt inherited from the original owners, while breaking even at the bottom line, under extremely tough economic times. Rob's success in these operations is due to his ability to simultaneously apply his culinary skills and his business operations discipline, passion and drive.

EXHIBIT B

EXHIBIT C

INITIALS: Port *[Signature]* Tenant *[Signature]*



**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 03-19

- WHEREAS, Charter, Section B3.581 empowers the San Francisco Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and
- WHEREAS, For almost forty years, the Papadakis family, through their wholly-owned California corporation, Peer Inn, Inc., operated the Peer Inn Restaurant at Pier 33, first on a month-to-month lease and then on a three-year lease; and
- WHEREAS, In 1996 and 1997, the San Francisco Port Commission entered Port Lease Nos. L-12392 and L-12460 (the "Leases"), with Peer Inn, Inc. both nine-year leases at Pier 33; and
- WHEREAS, On April 14, 1999, pursuant to a judgment of foreclosure by the United States Bankruptcy Court for the Northern District of California, City Building, Inc., a California corporation ("City Building"), foreclosed on the Leases and all of Peer Inn's rights in the leasehold estates created thereby; and
- WHEREAS, On October 13, 1999, by an Assumption, Assignment, Consent to Assignment and Extension Agreement, City Building assigned the Leases to Bistro Z, LLC, a California limited liability corporation ("Assignor"); and
- WHEREAS, Assignor desires to assign its right, title and interest in the Leases to Newco, a to-be-formed California corporation ("Newco"); and
- WHEREAS, The Leases require the Assignor to obtain the consent of the San Francisco Port Commission for any assignment of the Leases, which consent must not be unreasonably withheld;
- WHEREAS, Newco will be comprised of members of Assignor and Butterfly LLC, a California limited liability company ("Butterfly LLC") and its Managing Executive will be Robert Lam ; and
- WHEREAS, Butterfly LLC, under the leadership of Robert Lam, owns and operates the extremely popular and well-run Butterfly restaurant located in the Mission district of San Francisco, CA; and
- WHEREAS, Robert Lam was noted by the S.F. Chronicle as one of The Chronicle's 2003 Rising Stars, who "will soon be stars on the national stage..."; and
- WHEREAS, Butterfly LLC desires to relocate its successful restaurant to Pier 33 by assuming the rights, title and interest in the Leases from Assignor through the new entity Newco; and

WHEREAS, The relocation of Butterfly will require a period of time to physically relocate the restaurant, hire and train staff, perform minor renovation, and re-market the restaurant in its new upgraded location.

WHEREAS, To accommodate the relocation and provide a firm foundation from which to launch the new restaurant, Newco proposes to modify several existing terms of Port Lease L-12392 and to terminate Port Lease L-12460; and

WHEREAS, Staff has determined that Newco is creditworthy and capable of performing all of the obligations of the Assignor under the Leases and that the modifications to the Leases proposed by Newco are reasonable; and

WHEREAS, Staff recommends that the Port Commission authorize the Executive Director to negotiate and enter into proposed assignment and modifications to the Leases on the terms and conditions outlined in the Memorandum to the Port Commission for Agenda Item 4A for the Port Commission March 11, 2003 regular meeting ("Staff Memorandum")

WHEREAS, Based on staff's recommendation and its own review, the Port Commission finds that proposed assignment and modifications to the Leases are in the best interest of the Port ; now, therefore, be it

RESOLVED, That the San Francisco Port Commission hereby consents to the proposed assignment of the Leases from Assignor to Newco and modifications to the Leases, on the terms and conditions outlined in the Staff Memorandum; and be it further

RESOLVED, That the Executive Director, or his designee, is hereby authorized to negotiate and execute an Assignment, Assumption and Consent Agreement for the Leases with Assignor and Newco on terms and conditions substantially similar to those outlined in the Staff Memorandum and in a form approved by the City Attorney; and be it further

RESOLVED, That the Executive Director, or his designee, is hereby authorized to negotiate and execute an Amendment to Port Lease L-12392 and a Termination Agreement for Port Lease L-12460 with Newco on terms and conditions substantially similar to those outlined in the Staff Memorandum and in forms approved by the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 11, 2003.

Secretary



MEMORANDUM

March 5, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Brian McWilliams
Hon. Denise McCarthy

FROM: Douglas F. Wong *Ala Lee from*
Executive Director

SUBJECT: Adoption of Mitigated Negative Declaration and Mitigation Monitoring Program; Approval of Lease Disposition and Development Agreement and Lease with San Francisco Waterfront Partners, LLC for the development and historic rehabilitation of Piers 1-1/2, 3 & 5 located between Washington Street and Broadway; Approval of Schematic Drawings; and Approval of Related Amendments to the *Waterfront Land Use Plan*.

DIRECTOR'S RECOMMENDATION: FOR THE PIERS 1-1/2-3-5 PROJECT, ADOPT MITIGATED NEGATIVE DECLARATION; APPROVE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT AND LEASE WITH SAN FRANCISCO WATERFRONT PARTNERS, LLC; APPROVE SCHEMATIC DRAWINGS; and APPROVE AMENDMENTS TO THE *WATERFRONT LAND USE PLAN*

I. BACKGROUND

Port staff commenced working with the Ferry Building Waterfront Advisory Group in October 1999, seeking its input and guidance in formulating a development concept for Piers 1-1/2-3-5. The Advisory Group completed its work in December 1999, recommending a development concept which Port staff brought before the Port Commission for its consideration and approval. Thereafter, the Port Commission authorized and directed Port staff to issue an RFP, and on March 10, 2000, the Port issued a Request for Proposals ("RFP") to lease and develop the bulkhead buildings at Piers 1-1/2, 3 and 5, the shed remnant at Pier 3 and the structure located at Pier 1-1/2 behind the bulkhead (together, "the Site"). A Site Plan of the project area is attached hereto as Attachment 1. Pursuant to this RFP, the Port Commission, by Resolution No. 01-05, awarded to San Francisco Waterfront Partners, LLC ("SFWP") the opportunity to enter into an exclusive right to negotiate with the Port. An Exclusive Right to Negotiate agreement was executed by the Port and SFWP on March 21, 2001 ("Exclusive Right"). The Port Commission has granted extensions of the Exclusive Right through April 30, 2003, with an option to extend an additional three months if the Board of Supervisors has not approved the Lease.

This Print Covers Calendar Item No. 5A

In December 2000 facilities on the Site were condemned for occupancy by the Port's Engineering Department because of the severely deteriorated condition of the substructure. All leases were terminated, and the tenants vacated the facilities. Since that date, the Port has received no income from the Site. The only continuing use of the Site involves the driveway and public access walkway which provide access across the Site to the adjacent premises occupied by Hornblower Yachts, Inc. The Port expended \$2.4 Million to repair the substructure in these areas to enable continued access for Hornblower Yachts, Inc.

The Exclusive Right provides that during the Exclusive Negotiation Period, Port staff and SFWP are to negotiate agreements for the development and rehabilitation of the Site ("the Project"), which include the economic parameters, development standards and requirements, and a performance schedule. It also provides that such agreements are subject to Port Commission approval and cannot be considered by the Port Commission until environmental review under the California Environmental Quality Act (CEQA) has been completed.

A. Scope of Development

The Scope of Development (Attachment 2) involves the redevelopment and historic rehabilitation of the Site, which will restore the buildings and install new uses to attract the public to the waterfront. The Site will provide approximately 12,000 square feet for food and beverage dining establishments; approximately 69,000 square feet for Class A office space; a ticket sales office for Hornblower Yachts, Inc. ("Hornblower"), and approximately 36,000 square feet for public access, including a boat dock for water taxi service and temporary berthing of private recreational vessels. Due to budget constraints, SFWP has until 2010 to build the boat dock. SFWP is required to rehabilitate the buildings in accordance with standards and guidelines established by the Secretary of the Interior for rehabilitation and preservation of historic buildings.

B. Accomplishments to Date

The following has been accomplished during the Exclusive Negotiation Period:

- SFWP has completed its due diligence investigation of the Site and refined the design and scope of the Project, which is reflected in the Scope of Development and in the Schematic Drawings (Attachment 3).
- The California State Teachers' Retirement System (CALSTRS) has agreed to provide 100% of the debt financing. CALSTRS has also agreed to provide 90% of the equity required for the Project, in the amount of \$14.5 million, which is approximately 33% of the total Project cost (before tax credits) of \$43.8 million.
- The Major Environmental Analysis Division of the San Francisco Planning Department completed the environmental review of the proposed Project under the California Environmental Quality Act (CEQA), resulting in the issuance of a Mitigated Negative Declaration on May 31, 2002.
- On June 10, 2002, after several reviews (including two joint reviews with the Design Review Board of the *Bay Conservation and Development Commission (BCDC)*, the *Waterfront Design Advisory Committee (WDAC)* gave its favorable support to the

Schematic Drawings for the Project, attached hereto as Attachment 3. The five members of the *WDAC* are appointed by the Port, the San Francisco Planning Department and the Mayor's office.

- SFWP has filed the Historic Preservation Certification-Evaluation of Significance Applications (Part 1s) for Pier 5 and for Piers 1-1/2-3 with the State Historic Preservation Officer (SHPO) and the National Park Service (NPS).
- SFWP also has filed the Historic Preservation Certification Applications (Part 2s) for determination that the Project complies with the Secretary of the Interior's *Standards for Rehabilitation*. These documents outline in detail the proposed rehabilitation of the piers.
- On November 20, 2002 the Central Embarcadero Piers Historic District (comprising Piers 1 through 5) was listed by the NPS on the National Register of Historic Places. The properties also were listed on the California Register of Historical Resources.
- SFWP has filed its Application for permit from BCDC.
- SFWP has reviewed the Project several times with a representative from the City's Human Rights Commission.
- SFWP has met with representatives from H.E.R.E. Local 2 and discussed the terms for a mutually acceptable card check agreement for the restaurant subtenants.
- SFWP presented the proposed Project plans to the Ferry Building Northeast Waterfront Advisory Group and to San Francisco Architectural Heritage Foundation, and both groups endorsed the Project.
- SFWP presented the nomination of Piers 1-5 as the Central Embarcadero Piers Historic District to the Landmarks Preservation Advisory Board ("LPAB") for review and comment to SHPO. The LPAB recommended that the piers be listed on the National Register of Historic Places, but commented that labor history should be further investigated as a criterion for listing. The labor history of the piers was further elaborated in the nomination, to SHPO's satisfaction, and the nomination was forwarded to, and listed by, the National Park Service.
- Port staff and SFWP have negotiated the terms of a Lease Disposition and Development Agreement ("LDDA"), a Lease, a Permit to Enter for Construction Staging, a Parking Agreement and all required exhibits and attachments.
- SFWP has submitted a Site Permit and design development drawings for the Project to the Port's Engineering Department.

C. Future Required Approvals

Following adoption of the Mitigated Negative Declaration and approval of the agreements by the Port Commission, the following approvals must be obtained before construction can proceed on the Project:

- Approval of the Lease by the San Francisco Board of Supervisors
- A determination by BCDC and the State Lands Commission that the Project is in compliance with State Trust Purposes
- Issuance of a BCDC permit
- Approval by SHPO and NPS of the Part 1 and Part 2 Applications for Piers 1-1/2-3 and approval of the Part 2 Application for Pier 5. The Part 2 Applications are a determination that the Project as proposed complies with the Secretary of the Interior's *Standards for Rehabilitation*
- Issuance of a permit from the Army Corps of Engineers, and possibly approval by the Regional Water Quality Control Board
- Issuance of a Site Permit by the Port.

SFWP expects to receive these approvals and to commence construction by July 2003, and expects to complete construction by July 2005. After construction is completed, SFWP expects to receive certification from the NPS that the construction complies with the Secretary of Interior's *Standards for Rehabilitation*, making the Project eligible for a 20% Federal Historic Preservation Tax Credit.

II. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The San Francisco Planning Department issued a Mitigated Negative Declaration on May 31, 2002 regarding the proposed Project. This Negative Declaration finds that the Project will not have a significant effect on the environment and identifies certain Mitigation and Improvement Measures to avoid potential significant negative effects, which Measures are set forth in the attached Attachment 4. Before the Port Commission can approve any agreements with SFWP, it must consider and adopt the findings of the Mitigated Negative Declaration and adopt the Mitigation Monitoring and Reporting Program, which is attached hereto as Attachment 5, pursuant to the California Environmental Quality Act.

III. PROPOSED AGREEMENTS

The agreements negotiated by Port staff and SFWP consist of the following:

- (1) a Lease Disposition and Development Agreement ("LDDA")
- (2) a Lease
- (3) Attachments (to the LDDA) and Exhibits (to the Lease), which documents pertain to the transaction and include: Legal Descriptions and Site Plan; the Scope of Development; Schematic Drawings; a Schedule of Performance; the Project's Budget; Mitigation and Improvement Measures; an Equal Opportunity Program; First Source Hiring Agreement; Estoppel Certificate; Non-Disturbance Agreement; a form of Guaranty; the Permitted Title Exceptions; a form of Certificate of Completion; Examples of Percentage Rent Calculation and Transfer Proceeds Calculations; Prevailing Wage Provisions; a Permit to

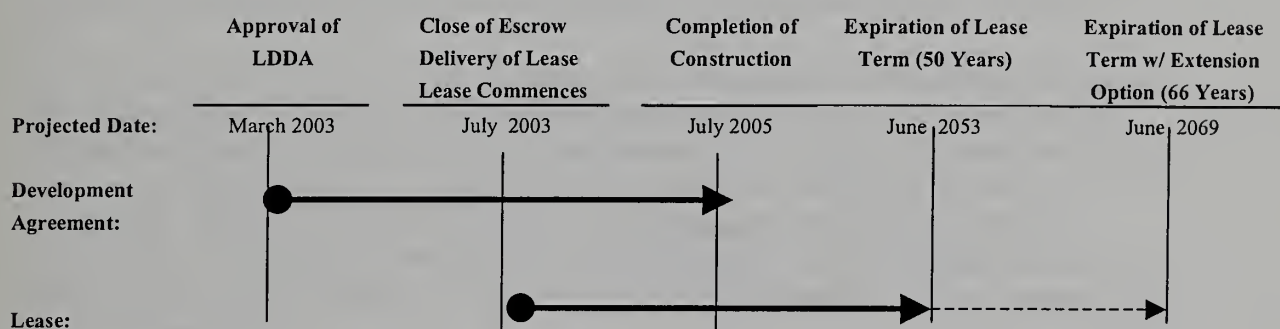
Enter for Construction Staging; a Parking Agreement to provide parking for the subtenants of the Project during the Term of the Lease, to be executed prior to the close of escrow; a Term Sheet for certain amendments to the leases between the Port and Hornblower; and a Guest Boat Dock Management Agreement. A form of the Lease also is an Attachment to the LDDA.

Approval is now being sought from the Port Commission for the LDDA, including the Attachments, and for the Lease, including the Exhibits.

The LDDA will be signed by the Port following its approval by the Port Commission and following approval of the Lease by the Board of Supervisors. The LDDA will go into effect immediately upon execution by the Port and SFWP, but the Lease will not go into effect until certain conditions are satisfied, which conditions are discussed below under the LDDA. Once these conditions have been satisfied, the fully-executed Lease will be delivered to the parties through an escrow.

The Lease will become effective immediately when it is delivered to SFWP, after which construction may begin. The Lease will expire 50 years following the commencement date of the Lease, or 66 years thereafter if the tenant exercises the Extension Option. The LDDA will expire upon completion of construction.

The structure and anticipated schedule for this transaction are illustrated in the following diagram:



It is important to note that, while only the LDDA would be signed by the Port following the approval of the lease terms by the Board of Supervisors and would then go into effect, Port Commission approval is being sought at this time for the entire transaction as described in all of the documents comprising the agreements. If the conditions stated in the LDDA are satisfied, the Executive Director will be authorized to execute and deliver these documents through escrow, including the Lease. In approving the transaction, the Port Commission is being asked to make certain findings that the proposed development of the Project promotes Public Trust objectives, including, without limitation, rehabilitation and renovation of historic marine resources, dedication of public access and uses within the buildings for public purposes.

A. Terms of the LDDA

The purposes of the LDDA are to set forth the conditions for the development of Piers 1-1/2, 3 and 5 by SFWP, to state the conditions for delivery of the Lease to SFWP, and to set forth SFWP's initial construction obligations upon delivery of the Lease. The Port will be obligated to deliver the Lease to SFWP provided the conditions are satisfied. The LDDA provides SFWP with the certainty it needs in order to invest further in the design and approval process for the Project and to finalize the Project financing. The LDDA also protects the Port in that the Port does not have to deliver the Lease unless and until certain conditions are satisfied.

1. Conditions stated in the LDDA for the development of the Site include the following:

- The Port is to deliver the Site to SFWP free of existing tenants and occupants.
- SFWP is to accept the Site in its "as is with all faults condition."
- SFWP is responsible at its own sole cost and expense to comply with all laws and regulations, and to obtain all regulatory approvals necessary to undertake the planned development.
- SFWP is responsible to perform any investigation and remediation of hazardous materials, including conditions existing prior to delivery, but only to the extent legally required as a result of SFWP's construction activities. SFWP is responsible for all costs incurred in developing the Site, obtaining utilities, and constructing improvements.
- SFWP will improve the Site in conformance with the Schedule of Performance, Scope of Development and Schematic Drawings (discussed below), which documents will be attached as Attachments to the LDDA. The construction design documents are defined, and the procedure for the Port to approve the construction design documents is established. The first step is the approval of the Schematic Drawings by the Port Commission; subsequent more detailed design documents would be subject to the approval of Port staff, including consistency with the Schematic Drawings approved by the Port Commission.
- SFWP is required to comply with the Mitigation and Improvement Measures and Monitoring Program identified in the Mitigated Negative Declaration, as set forth in Attachment 2 to the Resolution.
- SFWP is required to follow the Equal Opportunity Program to encourage participation by minority-owned businesses, women-owned businesses, and locally-owned businesses in designing and constructing the improvements, and is to pay prevailing wages for all construction work.
- The default and legal remedies of the parties are identified in the LDDA, which for the Port include termination, specific performance and damages, and for SFWP include termination, specific performance, and limited damages. In addition, if the Port fails to

approve or unreasonably withholds its approval as to SFWP's submitted requirements (e.g. construction drawings) within the time allowed, SFWP may request an expedited non-binding arbitration procedure.

- SFWP is required to comply with all applicable City requirements, including non-discrimination, paying prevailing wages, first source hiring, and the employee signature authorization ordinance (i.e. "card check agreement").
 - SFWP is required to carry insurance and indemnify the Port.
2. The following conditions must be satisfied in order for the escrow to close, whereby the Lease and the Site will be delivered to SFWP:
- SFWP has received approval from the National Park Service of the Part 1 and Part 2 Historic Preservation Certification Applications
 - SFWP has received all required approvals from regulatory agencies, including BCDC and the Army Corps of Engineers, and BCDC has agreed to amend Hornblower's BCDC permit to allow berthing of a vessel in the middle of Pier 3 on the south side
 - Port has approved the construction drawings
 - Port has issued a Site Permit
 - The San Francisco Planning Department has granted an off-street parking exemption
 - The leases with AMB Property, LP and with Hornblower have been amended to adjust the lease lines at Pier 1 and Pier 3, respectively
 - The *WDAC* and the Port Commission has approved the Schematic Drawings
 - The Port, through the *WDAC* process, shall have approved the final exterior design plans for the lighting, signage, canopies and landscaping for the Project, agreeable to SFWP
 - SFWP has submitted to the Port an updated Construction Budget, and evidence of a contract for the construction of improvements consistent with the Construction Budget
 - SFWP has submitted to the Port satisfactory evidence of adequate subordinate debt financing to complete the improvements, including a completion guaranty by CALSTRS securing SFWP's performance
 - Port and Hornblower have executed amendments to the Hornblower leases governing certain relationships between Hornblower and the Port concerning operations at the Site and at Pier 3 during the term of the Lease

- SFWP has given Hornblower a right of first offer to sublease space in Pier 3 for Hornblower's ticket office
 - Port and SFWP have entered into the Parking Agreement on the terms described in Section III.D. below.
 - Port and SFWP have entered into a Construction Parking Agreement on the terms described in Section III.D. below.
 - SFWP has submitted certificates of insurance for required insurance coverage
 - The Site is free of all tenants and occupants
 - SFWP has submitted, and Port has approved, the Equal Opportunity Program, a First Source Hiring Agreement and an HRC Certificate of Compliance
 - Port has granted SFWP a Permit to Enter certain areas of Port property for purposes of staging and construction lay down
3. Requirements for Construction include the following:
- Developer must perform the necessary rehabilitation project in accordance with a specified schedule of performance
 - Port must review and approve all construction documents to address design and historic rehabilitation concerns
4. The LDDA requires Port consent for any assignment of the document to another party, which consent may be withheld in the Port's sole discretion. However, the Port's consent is not required for a reorganization or sale of assets by SFWP, so long as Putnam Waterfront Partners remains the managing member and CalSTRS remains a participating member.

B. Terms of the Lease

The Lease, which will be delivered through escrow when the above conditions are satisfied, will include the following business terms:

- **Premises**: The Premises will consist of the Pier 1-1/2, Pier 3 and Pier 5 bulkhead buildings, the shed remnant at Pier 3, the structure behind the Pier 1-1/2 bulkhead, water areas adjacent to Pier 1-1/2 and Pier 5 ("Restricted Berthing Areas"), an area on the sidewalk north of Pier 5 and an area on the Embarcadero Promenade in front of Pier 3, both for outdoor café seating ("License Areas"), all as shown on the Site Plan attached hereto as Attachment 1.
- **Port's Option to Expand**: The Port shall have an option to expand its current premises at Pier 1 into the 2nd floor of Pier 1-1/2 and Pier 3, which space is contiguous to the Port's

offices. This expansion option will be for approximately 3,132 square feet and is exercisable at market rental rates whenever the space becomes available, but not more than every ten years.

- **Term:** The term of the Lease will commence upon the close of escrow and expire 50 years thereafter, unless the tenant exercises the 16-year option to extend, in which case the Lease will expire 66 years thereafter.
- **Uses:** At least 9,000 square feet of the Premises shall be used for ground floor food and beverage establishments, one of which is required to be located in the north end of the Pier 5 bulkhead. SFWP plans to construct three retail shell spaces for food and beverage establishments, with improvements to be completed by the food operator subtenants. These restaurant/cafes will be located in Pier 5, in Pier 3 and in Pier 1-1/2 (the bulkhead combined with the structure behind the bulkhead). No more than 69,022 square feet may be used for office. At least 36,000 square feet of the Premises shall be used for public access, including a boat dock and water taxi landing at Pier 1-1/2. A sales/ticket office also will be created in Pier 3 for Hornblower at Hornblower's option. Other permitted uses include temporary berthing; ceremonial berthing, excursion boats (but not dining excursions) if approved by the Port, water taxis, maritime office and other retail. The Port will retain the right to berth vessels free of charge at the Pier 1-1/2 boat dock with SFWP's consent. The Lease also includes a license for outdoor café seating in front of the eating establishments at Pier 5 and Pier 3, which licenses are revocable on 30 days notice. The Project's dock at Pier 1-1/2 will not prevent the Port from utilizing its own dock on the north apron of Pier 1, and SFWP has agreed that it will temporarily eliminate docking on the south side of its dock in order to allow Port to berth a vessel at Pier 1. Changes in use will require prior consent of the Port, to be implemented through a resolution of the Port Commission accepted in writing by SFWP.
- **Water Taxi:** The Port reserves the right to provide water taxi service at the Pier 1-1/2 water taxi landing, and at least one landing must remain open and available at all times for outside taxi operators. All water taxi operators will sign operating agreements directly with the Port, and the Port, pursuant to the Tariff, will set and collect the landing fees. All of the landing fees collected for landings at Pier 1-1/2 will be passed through to SFWP to help defray dock maintenance and repair costs. A water taxi is defined as a water vessel less than 60 feet in length used for transporting passengers on point-to-point trips, which vessel is Coast-Guard certified for intra-coastal passengers for hire and has a maximum capacity for 49 people, and shall not be used as a dining vessel.
- **Restricted Use Zone:** Subject to amendments to the existing Hornblower lease, the Port has agreed for the term of the Lease to prohibit construction of any permanent structures at Pier 3, in Hornblower's leasehold, in an area extending from the Pier 3 lease line to the end of the Ferry Boat Santa Rosa. Certain improvements and temporary structures, such as containers and light poles, will be allowed in this Restricted Use Zone. This prohibition will be imposed during Hornblower's lease term and thereafter extending until the expiration of SFWP's lease term.

- **Minimum Rent:** The Minimum Rent to the Port will be \$500,000 per year (before rent credits—explained below), payable in monthly installments of \$41,666.67. Currently, the Site provides no revenue to the Port because the buildings have been condemned. There will be no Minimum Rent during the construction period. Rent commences when a certificate of occupancy is issued or 24 months after lease commencement, whichever occurs first.
- **Minimum Rent Adjustment:** The Minimum Rent will be increased every 5 years after the Rent Commencement Date by the increase in the Consumer Price Index (CPI), with a minimum increase of 10% and a maximum increase of 20%. The Minimum Rent also will be adjusted at the end of the 20th and 40th years, and at the end of the original 50-year term if the option to extend is exercised, to the greater of (1) the Minimum Rent as calculated using the CPI; or (2) 85% of the average annual Minimum Rent and Percentage Rent due during the 10-year period preceding the adjustment date.
- **Percentage Rent:** In addition to Minimum Rent, SFWP will pay 15% of the Tenants' gross rental income from the Project earned during each lease quarter, offset by the Minimum Rent payable for the applicable quarter.
- **Rent Credits:** Because of the badly deteriorated condition of the substructure at the Site, as noted above, a substantial amount of the construction cost is attributable to the repair and seismic upgrading of the substructure. Under the Lease, SFWP will receive rent credits for the hard and soft costs actually incurred to repair and upgrade the substructure, up to a maximum amount of \$10 million dollars. The rent credits would be taken monthly against the amount of Minimum and Percentage Rent in excess of \$4,166.67 per month (\$50,000 per year). The period of Rent Credits would expire the earlier of when SFWP has taken the total rent credits for the allowable substructure costs, or 15 years after rent commences.
- **Historic Tax Credits:** SFWP shall retain all proceeds from any historic tax credits received, anticipated to be 20% of eligible hard and soft costs related to the rehabilitation project, less costs of obtaining the tax credits.
- **Port's Participation in Net Sales Proceeds:** The Port will receive 15% of net sales proceeds (net of reasonable sales transaction expenses) from all sales of the leasehold during the Lease term.
 - (a) **Initial Sale.** Net proceeds of the initial sale shall be determined after deducting transaction expenses and Tenant's net development cost (total certified development costs, less the discounted value of substructure rent credits actually taken as of the date of construction completion, at a 9% discount rate).
 - (b) **Successive Sales.** Net proceeds of sales by successor tenants shall be determined after deducting transaction expenses and the seller's purchase price for the leasehold.
 - (c) **Refinancing.** The Port will not participate in the proceeds from refinancing of the Project.
- **Improvements and Maintenance:** SFWP will be responsible for making all repairs and improvements to the Project, rehabilitating to historic preservation standards, abating

hazardous materials and constructing and maintaining public access improvements. All rent to the Port will be net, with SFWP being responsible for all operating expenses during the term of the Lease.

- **Insurance/Damage and Destruction:** SFWP will be required to carry a complete package of insurance on the Premises, which has been approved by the City's Risk Manager, including Builder's Risk Insurance (during the initial construction), Property Insurance (including earthquake and flood insurance if available at commercially reasonable rates, Commercial Liability Insurance (with limits of \$10 million), Worker's Compensation Insurance, Boiler and Machinery Insurance, Business Automobile Insurance, and Business Interruption Insurance. In the event of damage or destruction, SFWP will be responsible for restoring the Premises, and will be required to pay the Port proceeds of the business interruption insurance. SFWP shall have the right to terminate the Lease, rather than restoring the Premises, only in the event of either a major destruction (exceeding 75% of the cost to restore) during the last ten years of the Lease term, or in the event of an uninsured casualty (consisting of damage not covered by the insurance SFWP is required to carry and in excess of \$500,000 plus the amount of insurance policy deductible, or a casualty loss exceeding SFWP's earthquake or flood insurance plus deductible).
- **Security Deposit:** A security deposit equal to two months' Minimum Rent is required.
- **Assignment:** In the event that the Port consents to an assignment, which consent is not to be unreasonably withheld, the assignor shall be responsible only for obligations prior to the assignment, with the assignee being responsible for obligations after the assignment, as well as any unperformed obligation of the assignor arising two years prior to the assignment. Port consent is not required for an assignment solely for the purpose of accommodating the historic tax credits. The Port will be paid 15% of all sums received by SFWP for the sale and/or assignment of the Lease net of costs of sale and SFWP's development costs (less the discounted value of rent credits actually taken), if any. The Port also will receive 15% of all sums received by any future assignees for the sale/assignment of the Lease net of costs of sale and the assignor's purchase price for the Lease. (The foregoing does not apply to an assignment in conjunction with the sale of historic tax credits).
- **Subletting:** The Port will have the right to consent to the form and material business terms of subleases larger than 10,000 square feet and having a term greater than 10 years for which a non-disturbance agreement is requested. The Port also has the right to approve any subleases to an affiliate of the Tenant.
- **Indemnity:** SFWP will indemnify the Port consistent with the Port's standard indemnification provisions approved by the City Attorney.
- **Development Fees:** SFWP will be required to pay a Transit Impact Development Fee to the City, estimated at approximately \$100,000.

- **Mitigation:** SFWP must construct the Project in accordance with the Mitigation and Improvement Measures adopted by the Port Commission as part of this action.
- **City Requirements:** SFWP must comply with all applicable City Requirements, including non-discrimination, equal benefits, first source hiring, equal opportunity program, prevailing wages and the "card check" ordinances.
- **Leasehold Mortgages:** SFWP will be permitted to mortgage its leasehold interest (but not the fee) as needed to obtain financing for construction and subsequent improvements.

C. **Attachments to the LDDA and Exhibits to the Lease**

- **Schedule of Performance**
The schedule of performance for SFWP under the LDDA, under which SFWP must close escrow by July 1, 2004, subject to force majeure, and improvements must be constructed within two years after commencement of construction. (It is anticipated that SFWP will close escrow by July 2003.)
- **Scope of Development**
The Scope of Development for the Project to be undertaken by SFWP under the LDDA is attached hereto as Attachment 2.
- **Schematic Drawings**
The Schematic Drawings, which have been reviewed by and received favorable support from the *Waterfront Design Advisory Committee*, are attached hereto as Attachment 3. However, it should be noted that SFWP presently is undergoing value engineering for the Project, and as a result there may be revisions to the current Schematic Drawings, including connecting the PortWalk directly to the eastward side of the Piers Project buildings and eliminating the "leg" on the water taxi dock. These changes will address concerns raised by the State Lands Commission and by Hornblower. If so, revised Schematic Drawings will need to be reviewed and approved by the *WDAC*. If the Port's Executive Director determines that such revisions are material, SFWP will seek Port Commission approval of the revised Schematic Drawings. If the revisions are determined to be not material, SFWP will be allowed to proceed with construction drawings.
- **Equal Opportunity Program**
SFWP has prepared an Equal Opportunity Program, which has been reviewed and approved by the City Attorney's Office and by the City Human Rights Commission's representative.
- **First Source Hiring Agreement**
SFWP has agreed to comply with the City's First Source Hiring program, and the document has been reviewed and approved by the City Attorney's Office.

- **Guest Boat Dock Management Agreement**

The parties have outlined responsibilities and duties for managing, maintaining and operating the boat dock at Pier 1-1/2 (and possible future boat docks at Pier 5), including rules for security, signage, abandoned vessels, etc.

D. Other Agreements To Be Executed Prior to Close of Escrow

- **Amendments to Hornblower's Leases**

In order to provide certain assurances sought by SFWP governing the relationship between SFWP and Hornblower, it is anticipated that the Port and Hornblower will execute amendments to Hornblower's leases covering the following issues: sharing of certain maintenance costs; access through Pier 3; provision of 25 parking spaces to SFWP; Hornblower's agreement to relocate its ticket office so that SFWP can build a cafe in Pier 3; roof access to the flagpole; adjustment of Hornblower's lease lines; adjustment of Hornblower's restricted berthing area boundary to enable SFWP to install a barge during construction; re-mooring of the Ferry Boat Santa Rosa; allowing for construction staging in Hornblower's leasehold; relocation of Hornblower's western berth to the middle of Pier 3 on the south side; and establishment of a "Restricted Use Zone" to prohibit construction of any permanent structures on a portion of Pier 3. Any amendments to Hornblower's leases shall be subject to approval by the Port Commission.

- **Parking Agreement**

The Port has negotiated on SFWP's behalf for Hornblower to provide 25 parking spaces to SFWP at Pier 3 for the term of Hornblower's lease. If a parking garage is built nearby, 20 of the spaces may be transferred to the garage. For the term of SFWP's lease, the Port agrees to license 5 spaces to SFWP at Pier 3 and 20 spaces at either Pier 3 or in a nearby parking garage, if built. These spaces are for use by the Project's subtenants and customers only. The rental rate will be at market, determined annually by the Port.

- **Construction Parking Agreement**

The Port will provide construction parking at reduced rates, in locations near the Site to meet union requirements, for construction workers during the construction period. The terms of this agreement will be negotiated before close of escrow and memorialized in a separate Construction Parking Agreement.

- **Permit to Enter**

The Port will grant SFWP a Permit to Enter for construction staging and materials laydown on Port property (water and sidewalk areas) during the period of construction.

IV. FINANCIAL ANALYSIS

Except for access ways to the adjacent Hornblower leasehold, the existing facilities on the Site are currently condemned for occupancy, and are not generating any revenue to the Port. Unless repairs are undertaken, deterioration will continue, and the facilities will eventually need to be demolished by the Port at a considerable cost. The Port does not have the capital funds to either repair the substructure or demolish the facilities.

The essence of this financial transaction is that the proposed private development will generate the revenues necessary to fund the required repairs and upgrades to the substructure, and then the Port will participate in the future revenues generated by the development of this currently non-revenue-producing Site. The developer will be reimbursed for the substructure costs up to a maximum of \$10.0 Million by means of rent credits applied to minimum and percentage rent due the Port above \$50,000 per year. After the rent credits are amortized, the Port's participation will include guaranteed minimum rent versus percentage rent calculated on the gross rental revenues of the project, plus participation in net proceeds from future sales of the leasehold.

The maximum period for amortizing the rent credits is 15 years, and it is expected that the developer will require 13-15 years to amortize the cost of the substructure improvements. During this amortization period, the Port will receive only \$50,000 per year after rent credits. However, following this amortization period in year 16, guaranteed minimum rent is projected at \$864,000, and minimum and percentage rents are projected to total up to \$1.0 Million. Assuming a sale of the leasehold in year 15, the Port's participation in the net sales proceeds is projected to be \$0.5-2.0 Million. The Port's revenues from this project are thus expected to total \$2.1-\$5.2 Million for years 1-16. These totals, of course, do not take into account the significant revenues received after year 16 through the remainder of the 50-66 year lease term.

The development costs, which were originally projected at approximately \$42 Million, are now projected at approximately \$44 Million. This transaction is not structured to provide SFWP with a preferred return on these costs, and SFWP therefore is assuming the development cost risk, among other development risks. However, SFWP will retain all proceeds from the sale of historic tax credits, and will receive rent credits for the cost of substructure work up to a maximum of \$10.0 Million.

In addition to the revenue that the Port will receive, there are other benefits that the Port will realize from the Project:

- Renovating, repairing, restoring and rehabilitating Piers 1-1/2, 3 and 5, thus saving these significant historic maritime resources.
- Avoiding the cost to repair or demolish these condemned facilities.
- Rehabilitating the piers consistent with the Secretary of Interior's Standards for Rehabilitation
- Implementing the goals and objectives of the Port's *Waterfront Land Use Plan* as stated in the Request for Proposals, i.e.,

“To (1) create an inviting mixed-use Project which will help attract the public to the Bay and enhance their waterfront experience, (2) preserve and rehabilitate the historic waterfront maritime buildings on the Site, and (3) provide rental revenue to the Port to support its public trust mandate.”

- Seismically upgrading the piers
- Placing the piers on the National Register of Historic Places
- Supporting maritime commerce by constructing a ticket office/visitor center for Hornblower, a long-time maritime tenant at the Port
- Supporting maritime commerce by building a new public boat dock, which will allow for temporary berthing, ceremonial berthing, and water taxi service
- Providing public access to the Bay
- Attracting visitors to the waterfront with new restaurants and cafes and lighted public walkways
- Continuing the PortWalk and Bayside History Walk, allowing the public to learn the history of the piers through an interpretive signage program and displays of artifacts
- Establishing highly visible and accessible Class A office space in the piers fronting on The Embarcadero
- Allowing the Port to expand its administrative offices if necessary in the future

V. AMENDMENTS to the Waterfront Land Use Plan

The *Waterfront Land Use Plan* ("WLUP") was adopted by the Port and the Planning Department in 1997. Uses that are allowed in the Lease for this Project need to be consistent with the WLUP. The proposed Project is consistent with the WLUP except for the office use at Pier 3 and the public access at Piers 1-1/2 and 5. Although the WLUP Table for Acceptable Uses for these piers does not expressly include maritime use and recreational boating use, the WLUP permits maritime use on any Port site. Port staff therefore is requesting amendments to the WLUP (set forth in Sections A. and B. below).

- A. Office Use at Pier 3. The WLUP allows for general office use at Pier 1-1/2 and Pier 5 but is silent as to office use at Pier 3. The Project encompasses construction of office space at Pier 3, and such use was analyzed in the environmental review document (Mitigated Negative Declaration published May 31, 2002). The addition of office use at Pier 3 was found to have no significant impact on the environment, and therefore Port staff recommends that the WLUP be amended to allow for general office use at Pier 3.
- B. Public Access at Piers 1-1/2 and 5. The WLUP allows for public access at Pier 3 but is silent as to public access at Pier 1-1/2 and Pier 5. The Project encompasses construction of public access at all three piers, and such use was analyzed in the environmental review document. The addition of public access was found to have no significant impact on the environment, and is in fact a major element of the Project that the Port is requiring. Port staff therefore recommends that the WLUP be amended to allow for public access at Pier 1-1/2 and Pier 5.

VI. RECOMMENDATION

Port staff respectfully requests the following:

- (1) Adoption of the Mitigated Negative Declaration published May 31, 2002 for the Redevelopment of Piers 1-1/2, 3 and 5;
- (2) Approval of the Lease Disposition and Development Agreement (LDDA), including Attachments, for the development and historic rehabilitation of Piers 1-1/2, 3 and 5 in conformance with the terms described above;
- (3) Approval of the Lease, including Exhibits, between the Port and San Francisco Waterfront Partners, LLC, on the terms described above;
- (4) Approval of the Schematic Drawings attached hereto as Attachment 3; and
- (5) Approval of the amendments to the *Waterfront Land Use Plan*, as set forth above.

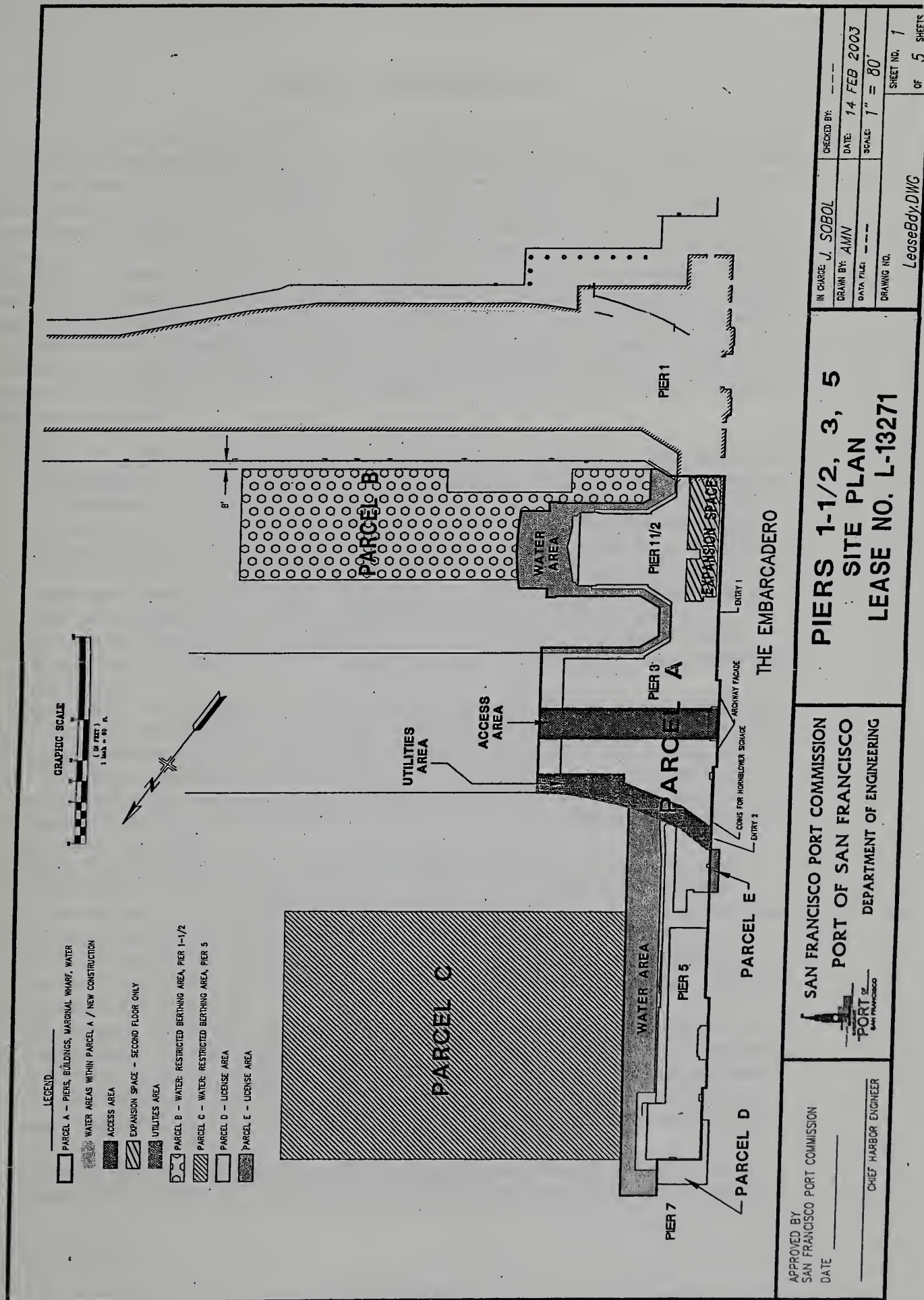
Prepared by Jennifer Sobol
Project Manager

ATTACHMENTS to Staff Report

- 1 SITE PLAN: PIERS 1-1/2, 3 & 5
- 2 SCOPE OF DEVELOPMENT
- 3 SCHEMATIC DRAWINGS

ATTACHMENTS to Resolution

- 1 Ferry Building Area Plan Implementation
- 2 Mitigation Monitoring and Reporting Program



SCOPE OF DEVELOPMENT

The proposed project involves the redevelopment and historic rehabilitation of the Piers 1-1/2, 3 and 5 bulkhead buildings, the Pier 3 shed remnant and the pier structure behind the Pier 1-1/2 bulkhead. The proposed project will provide approximately 69,000 square feet of Class A office space on the first and second floors, approximately 12,000 square feet of ground floor commercial retail space to be used for food and beverage establishments, approximately 1,404 square feet for a ticket office/visitor center for Hornblower Yachts, Inc. ("Hornblower") (unless Hornblower consents to a different square footage), approximately 48,000 square feet of public access, which includes future proposed boat docks at Pier 5 and includes approximately 5,500 square feet for a water taxi/boat dock at Pier 1-1/2. Tenant improvements and finishes shall be consistent with a high-quality development located in the San Francisco Financial District. In addition to a complete rehabilitation of these National Register pier buildings to Secretary of the Interior Standards, the project must enhance the public's appreciation of and access to the San Francisco waterfront.

1. Uses

- a. Retail Uses. Tenant shall create retail space for at least two ground-level food and beverage establishments: one at the north end of the Pier 5 bulkhead one at the south end of the Pier 1-1/2 bulkhead, which also must include the pier structure behind the Pier 1-1/2 bulkhead. Tenant shall create retail space for a third food and beverage establishment in the Pier 3 bulkhead if Hornblower agrees, per the Hornblower Term Sheet, to relocate its ticket office to the area identified as the "Hornblower Ticket Office" on Exhibit 1 to Attachment 15 (the Hornblower Term Sheet). Tenant also shall create a retail shell space for Hornblower's ticket office/visitor center in the Pier 3 bulkhead in accordance with the terms of Hornblower's Lease No. L-12175 with the Port, or in accordance with the terms of the Hornblower Term Sheet, whichever is applicable, or as otherwise agreed to by Hornblower and Tenant.
- b. Boat Docks. By December 31, 2010, Tenant shall create a boat dock and water taxi landing at Pier 1-1/2, substantially in accordance with the approved Schematic Drawings; provided however, that the water taxi landing shall be modified to remove the "leg" running north-south and provided further that the boat dock may be modified so long as the modified design and location are reasonably approved in advance by Port. Tenant may, but is not required to, create additional boat docks in the Pier 5 basin, in accordance with the approved Schematic Drawings.
- c. Public Uses. Tenant shall create public access walkways around and through the project, continuing the PortWalk and Bayside History Walk, in accordance with the approved Schematic Drawings. The public access areas shall be used for public access uses consistent with requirements imposed by the *Bay Conservation and Development Commission* (BCDC). Design, color and location of street furniture, signage and other elements to be installed in the public access areas shall be as approved by the *Waterfront Design Advisory Committee* or by Port staff.
- d. Office Space. Except where eating establishments and the Hornblower ticket office will be built pursuant to paragraph 1(a) above, Tenant shall create Class A office space on the first and second floors of the bulkhead buildings at Pier 1-1/2, Pier 3 and Pier 5; and shall create Class A office space in the Pier 3 shed remnant on the first floor and create a second floor and mezzanine. Total office space shall not exceed approximately 69,022 square feet for the project.
- e. License Areas. In the License Area at Pier 5 and the License Area at Pier 3, as shown on Exhibit B to the Lease and Attachment 2 to the LDDA, Tenant shall create café seating for

the adjacent restaurant uses with tables, chairs and other street furniture approved by the *Waterfront Design Advisory Committee*.

2. Development and Design

The design of the project shall be generally consistent with the Schematic Drawings dated July 12, 2002 and approved by the *Waterfront Design Advisory Committee* on June 10, 2002. Said Schematic Drawings are attached hereto.

3. Retention of Historic Fabric

During the redevelopment of the piers, and throughout the Term of the Lease, Tenant shall retain the historic fabric of the buildings as required by the National Park Service in its review for conformity with the Secretary of the Interior's Standards for Rehabilitation in designating the piers as a certified rehabilitation of a certified historic district under the Federal Historic Preservation Tax Incentives program.

4. Additional Development Standards

- a. The development of the project shall comply with all applicable legal requirements including, but not limited to, applicable provisions of the San Francisco Building Code, as amended by the Port Building Code, and the State Historic Building Code.
- b. Tenant shall install a seismic joint on Pier 3 within Parcel A of the Premises between the Pier 3 shed building and the lease line separating the project site from the leasehold for Hornblower.
- c. The project shall include seismic upgrades, structural upgrades and substructure repairs. It shall include upgrade of electrical, mechanical, water, sewer, and telecommunications systems. Storm water drainage shall be connected to the City's combined storm drain/sewer system so that there is no direct discharge to the Bay.
- d. The buildings' existing heights shall not be altered, with the exception of the Pier 3 shed remnant where a central monitor with clerestory windows and glass-skylighted roof may be constructed; provided, however, that the height at the ridge of the new monitor shall not exceed 46 feet.
- e. The existing footprints of the buildings shall not be altered, with the following exceptions:
(i) the Pier 3 shed remnant may be extended 10 feet eastward from the existing shed footprint; (ii) the abandoned storage shed of 239 square feet located at the north end of Pier 3 shall be demolished; and (iii) the center portion of the east elevation of Pier 5 may be extended eastward in accordance with the approved Schematic Drawings.
- f. Any rooftop mechanical equipment shall be adequately screened.

5. General Construction Requirements

Construction of the project shall be performed in accordance with the Mitigation and Improvement Measures set forth in the Final Negative Declaration for the project, 2001.0448E Redevelopment of Piers 1-12, 3 and 5, dated May 31, 2002, with respect to noise, traffic, air quality, biological resources, hazardous materials and cultural resources impacts, and in a workerlike, safe and orderly manner so as to minimize, to the extent reasonably feasible, disturbance to the adjoining property, as well as to the community as a whole. Tenant shall provide ingress and egress access for pedestrians and vehicles to and from Hornblower's leasehold at Pier 3 twenty-four hours per day, seven days per week throughout the construction period.

THE PIERS

PIERS 1.5, 3 & 5
SAN FRANCISCO, CALIFORNIA

SAN FRANCISCO, CALIFORNIA

H A W A I I

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DISCUSSION

THE

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ATTACHMENT 3

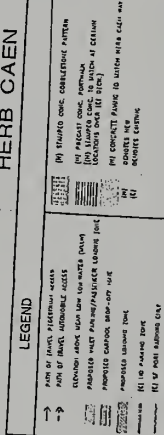
ENLARGED SITE PLAN

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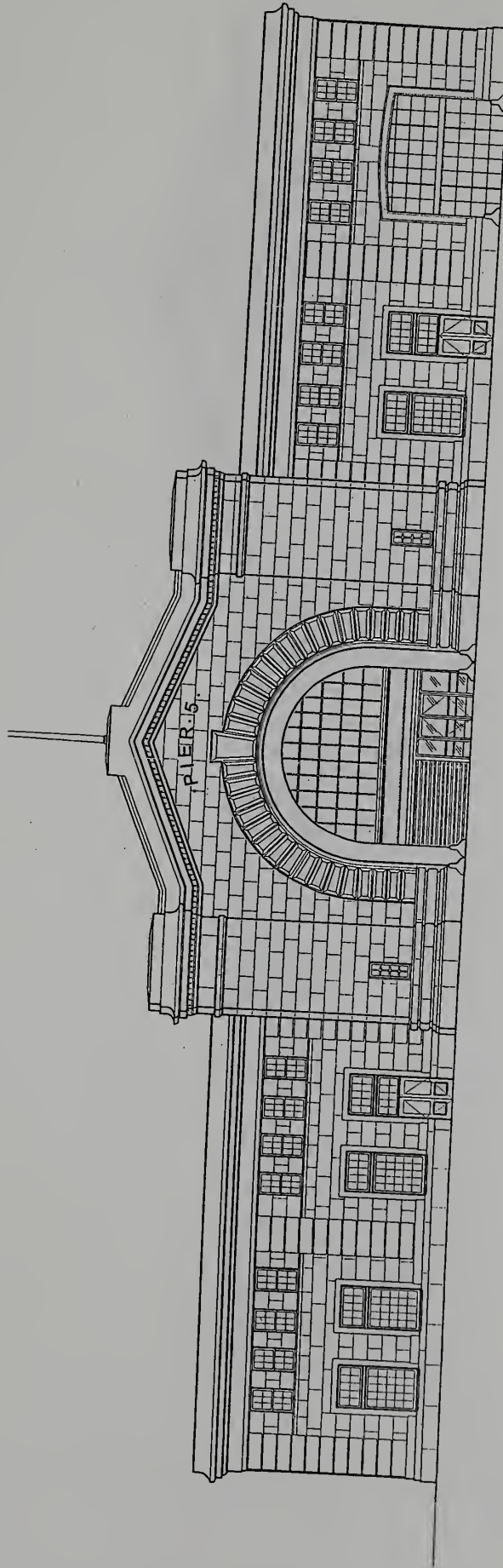
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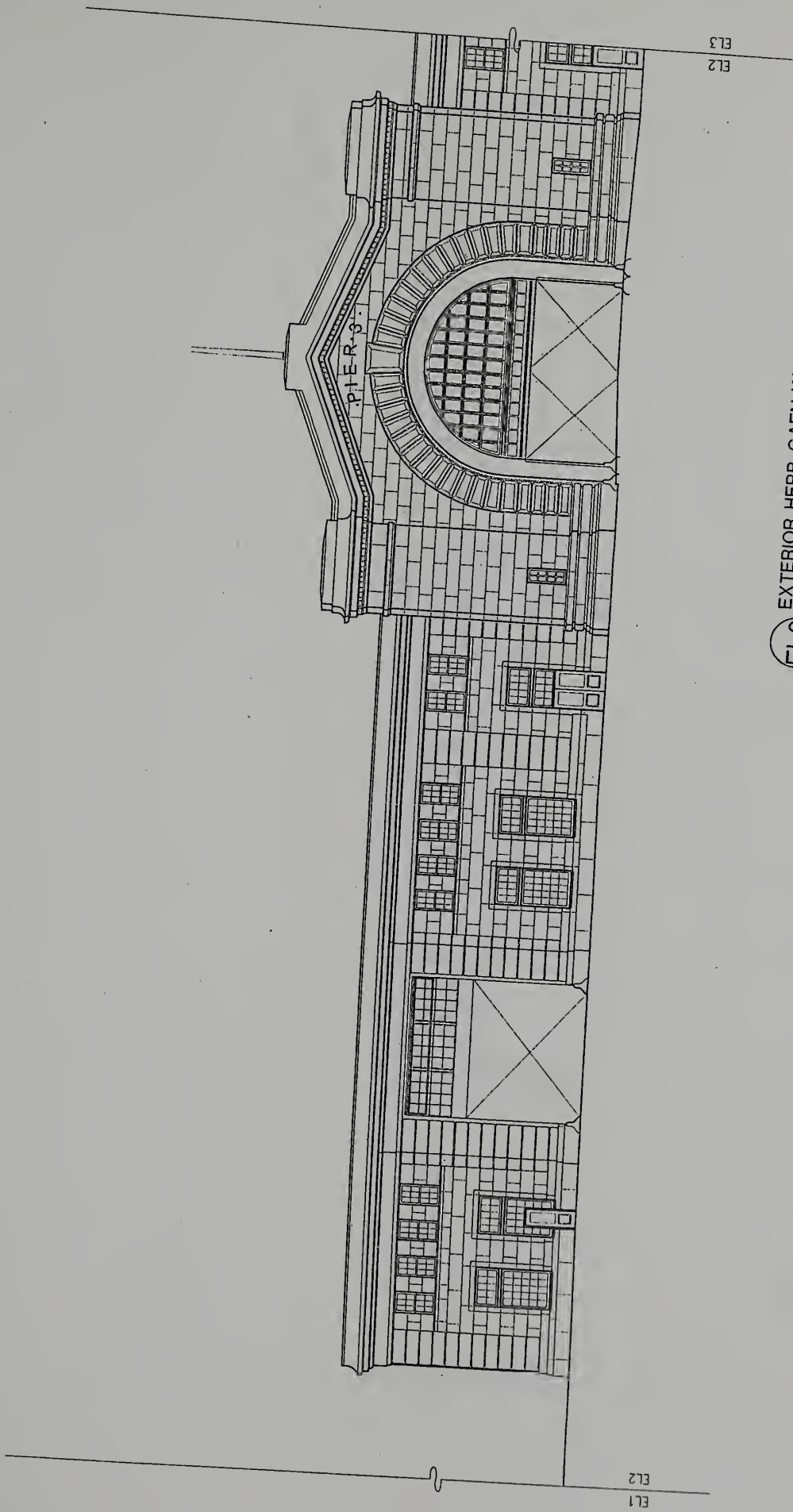


ENLARGED PORTWALK PLAN
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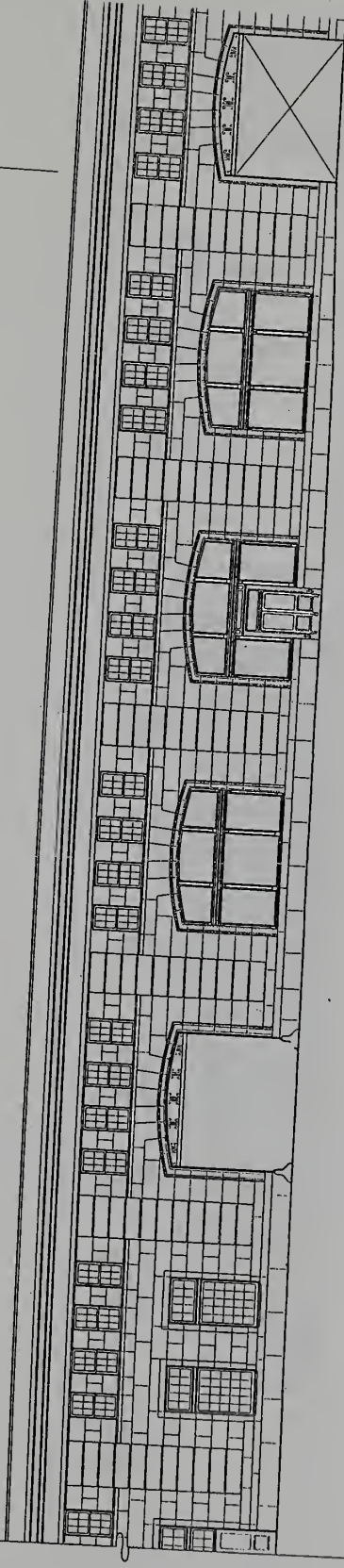
EL1 EXTERIOR HERB CAEN WAY ELEVATION
1/16" = 1'-0"

EL1
EL2



EL2 EXTERIOR HERB CAEN WAY ELEVATION
1/16" = 1'-0"

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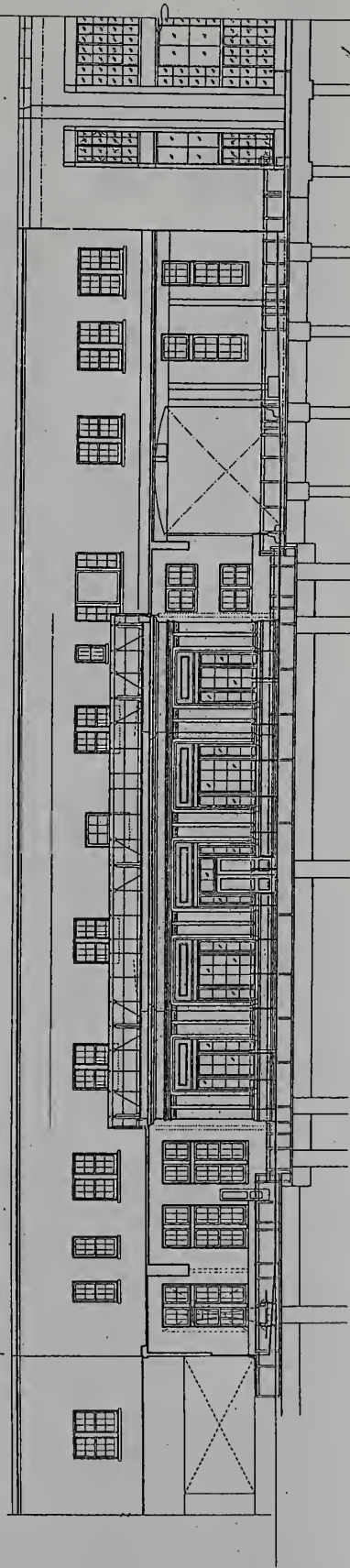


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EL3 EXTERIOR HERB CAEN WAY ELEVATION
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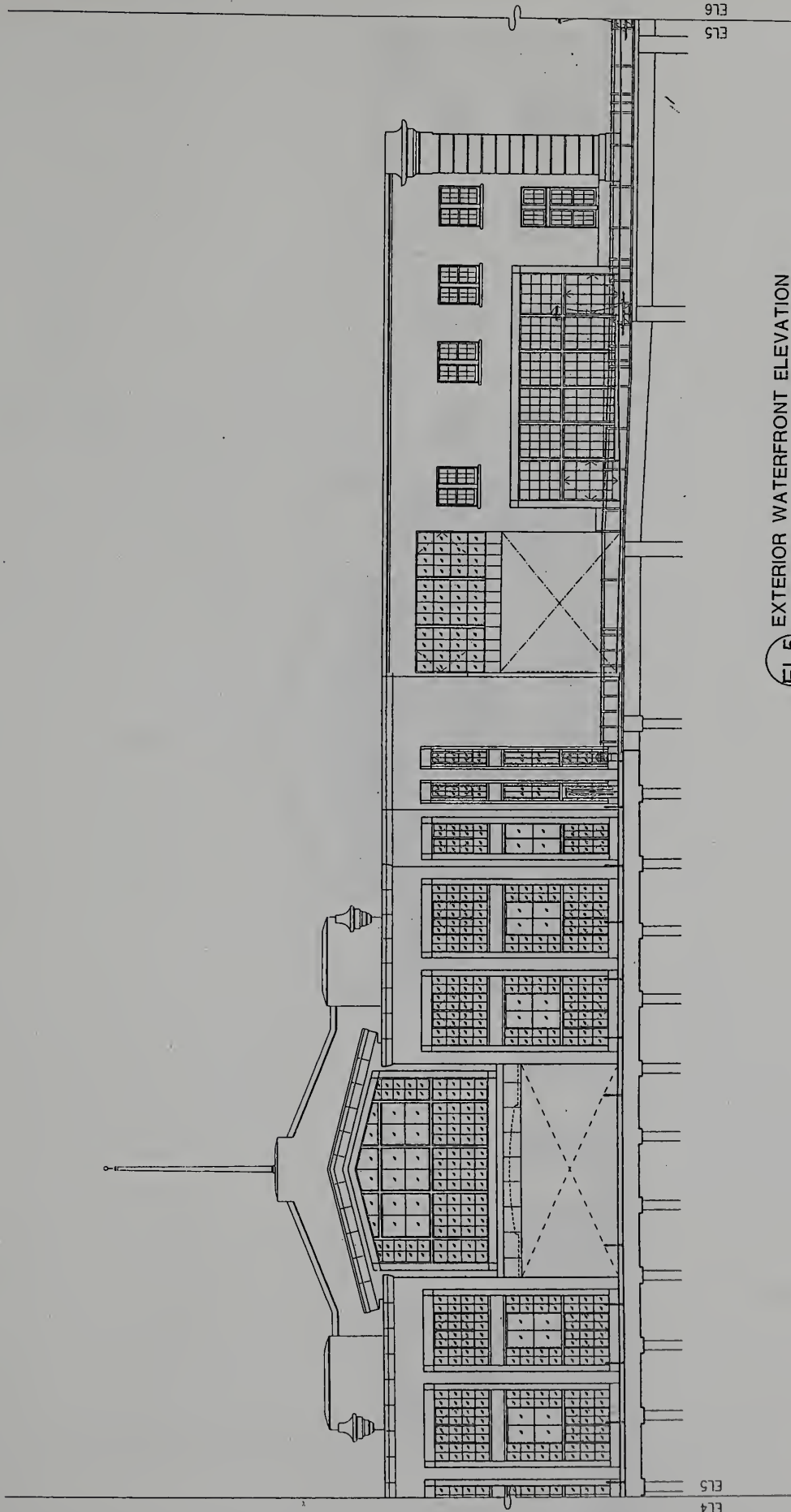


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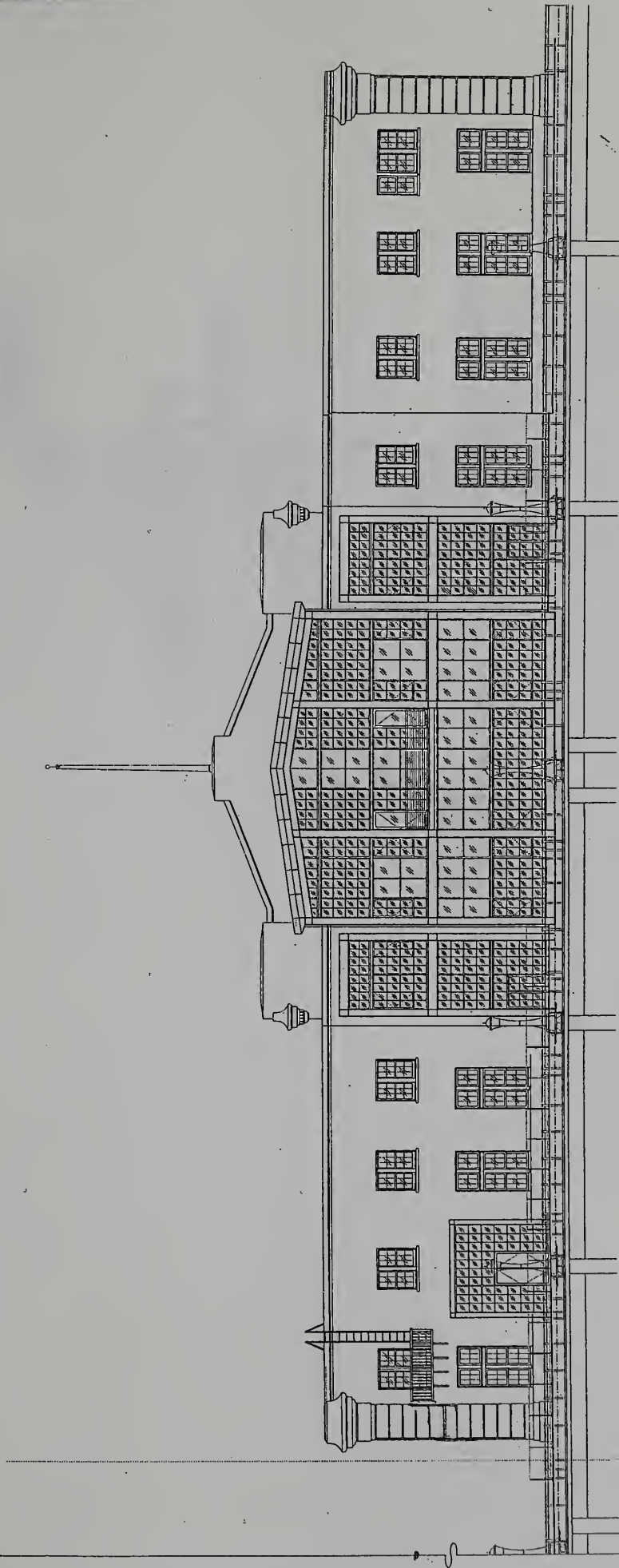
EXTERIOR WATERFRONT ELEVATION

EL4

1/16" = 1'-0"



EL5 EXTERIOR WATERFRONT ELEVATION
1/16" = 1'-0"



EL 6
EXTERIOR WATERFRONT ELEVATION
1/16" = 1'-0"

EL 5
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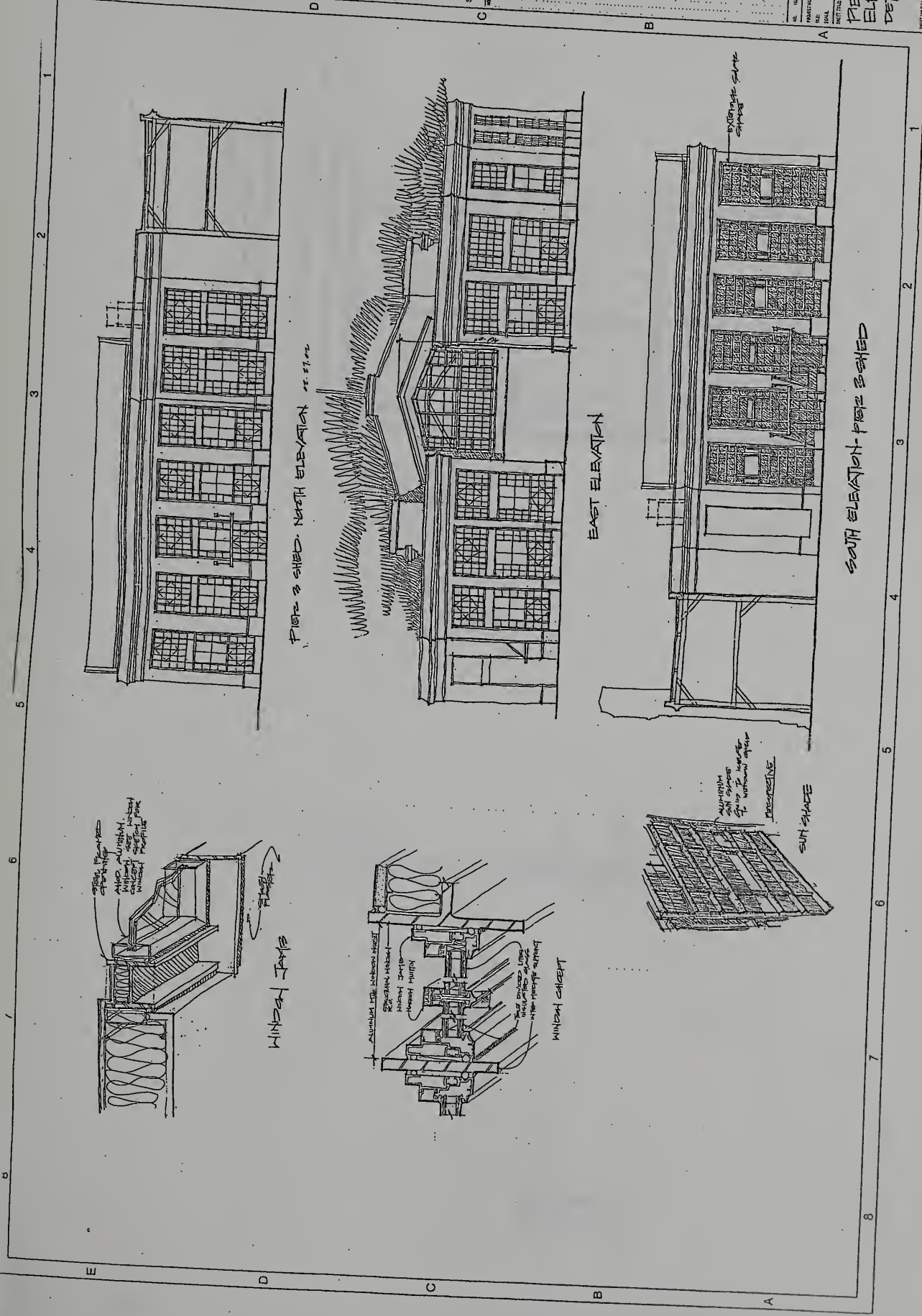
5 CROSS SECTION THRU PORTWALK AND (E) DECK

THE PIERS
 PERS 1, 3 & 5
 SAN FRANCISCO, CALIFORNIA

PRELIMINARY
 NOT FOR CONSTRUCTION

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PIER 3 SHED
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HANNU
ASSOCIATES

STRUCTURE / COMPANIES INTERIOR
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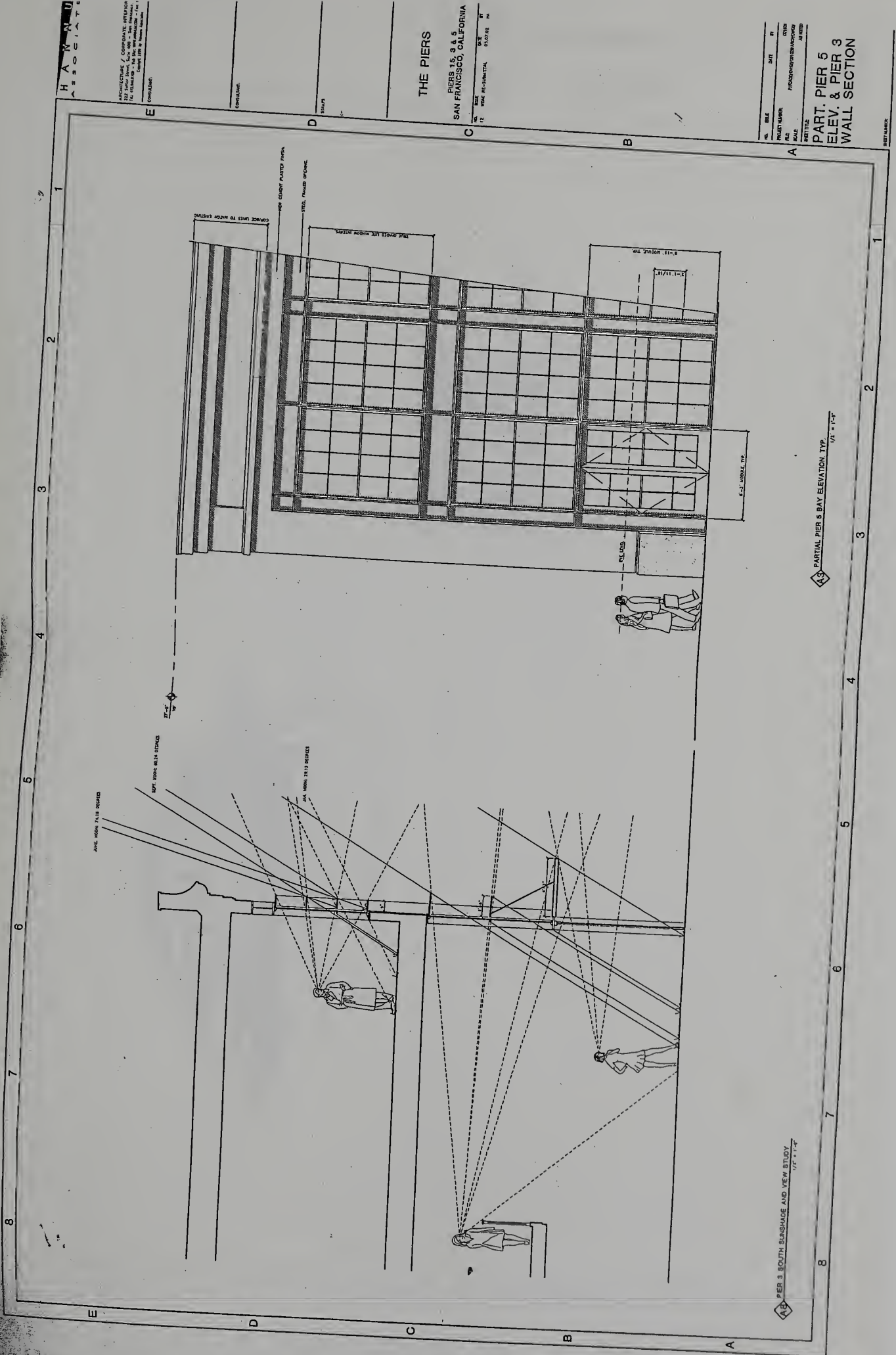
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PIERS 15, 3 & 5
SAN FRANCISCO, CALIFORNIA

DATE: 05.07.02
BY: HANNU ASSOCIATES

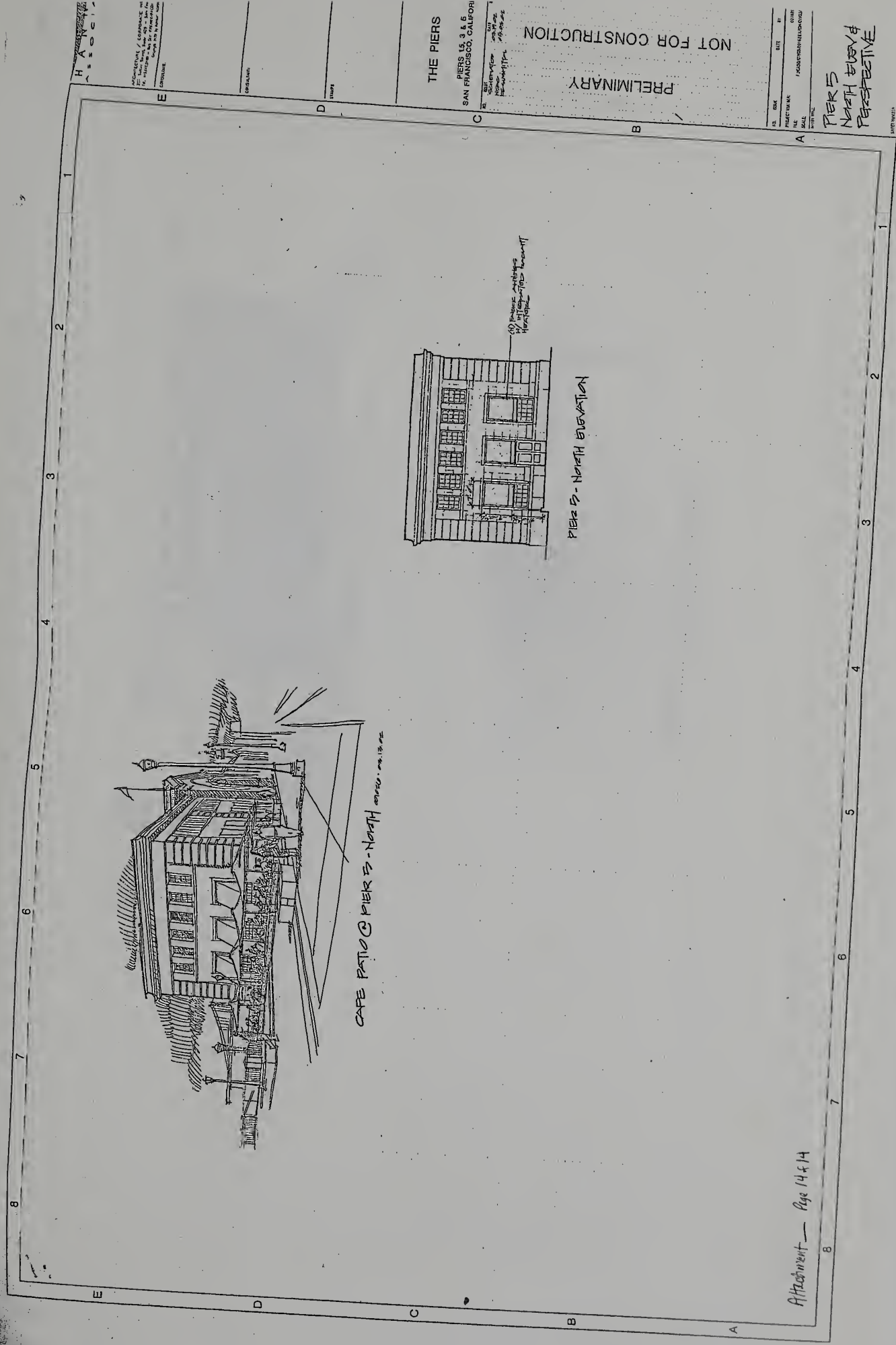
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PART. PIER 5
ELEV. & PIER 3
WALL SECTION



PARTIAL PIER 5 BAY ELEVATION TYP. 1/8" = 1'-0"

PARTIAL PIER 3 SOUTH ELEVATION TYP. 1/8" = 1'-0"



H A N D O U T

STRUCTURE / CORPORATE MEANS
22 Taylor Street, Suite 603 - San Francisco
Tel 415 774 2209 - fax 415 774 2200
Super 20 Hill St. Marina del Rey

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THE PIERS

PIERS 1.5, 3 & 5
SAN FRANCISCO, CALIFORNIA

DATE
EXAMINATION: 05.19.07
NAME: [illegible]
SUBJECT: [illegible]

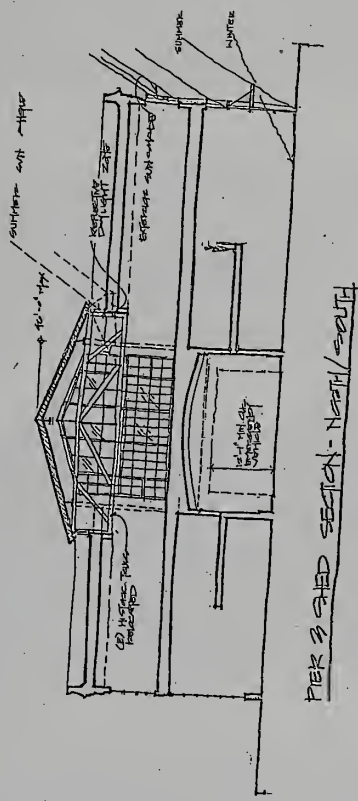
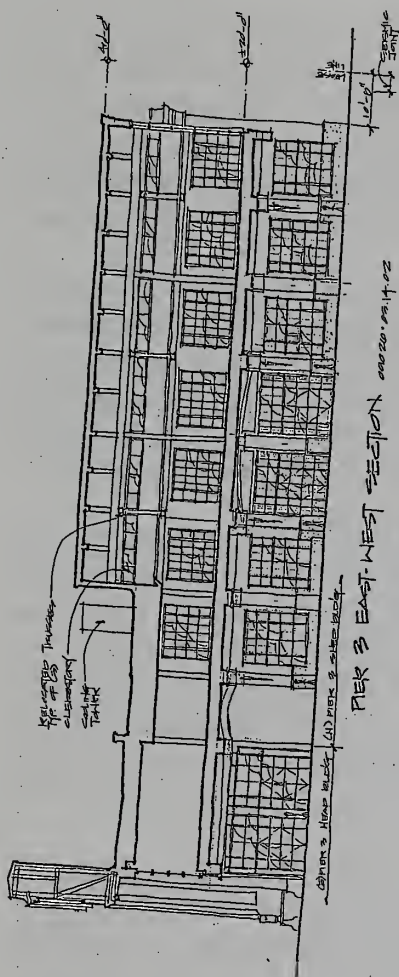
PRELIMINARY

NOT FOR CONSTRUCTION

	DATE	TIME	BY
ADAMS-REYNOLDS, THOMAS	9/7/80		
MILB			
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PIER 3
BUILDING
SECTIONS

UNIT 2.190A



**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 03-17

- WHEREAS, In 1997, the San Francisco Port Commission ("Commission") adopted the Port of San Francisco Waterfront Land Use Plan, including the Design and Access Element (collectively, the "Waterfront Plan") after an intensive seven year planning process that culminated in the Board of Supervisors and Planning Commission adopting conforming amendments to the City's General Plan and Planning Code; and
- WHEREAS, After a multi-year cooperative process, the Port Commission and the Bay Conservation and Development Commission ("BCDC") adopted amendments to BCDC's San Francisco Bay Plan and BCDC's San Francisco Waterfront Special Area Plan ("Special Area Plan") in August 2000, which allowed for the redevelopment of certain piers for uses consistent with the public trust; and
- WHEREAS, In 2001, through AB 1389, the State legislature ratified the Special Area Plan as necessary to the health, safety and welfare of the public in the entire Bay Area, and declared that the Special Area Plan should provide for, among other things, a historic preservation mechanism to ensure preservation of important historic resources on the piers, and the ability of the Port to repair, improve, or use the piers not designated for removal between Pier 35 and China Basin for any purpose consistent with the Burton Act, the public trust and the Special Area Plan; and
- WHEREAS, The Special Area Plan contains policies to allow for the repair and rehabilitation of existing piers, pier sheds, bulkheads and connector buildings that are listed on the National Register and/or listed as a California Historic Landmark, consistent with the Secretary of the Interior's Standards; and
- WHEREAS, The Waterfront Plan includes Piers 1½, the Pier 3 bulkhead and shed building, and the Pier 5 bulkhead/connector building (collectively, the "Piers Project") within the Ferry Building Mixed Use Opportunity Area (the "Ferry Building Area"); and
- WHEREAS, The Special Area Plan includes Piers 1½, 3 and 5 as Piers Not Designated for Removal, and sets forth criteria designed to encourage historic preservation and increased public access, including creation of a continuous PortWalk and a Bayside History Walk; and
- WHEREAS, A primary objective for the Ferry Building Area is the preservation and restoration of historic structures, both to recall the area's historic use and to accommodate new uses, which objective is summarized in the Waterfront Plan as follows:

"A central objective for this area is the preservation and restoration of historic structures.... The area objectives promote waterborne commute and recreational travel and enjoyment, and the restoration of the area as a major intermodal transit center for the City. To complement existing and new ferry, excursion boat, water taxi, historic ship and recreational boat moorings, other commercial and public uses are permitted.... Together, these uses should emphasize the civic importance of the area... and establish the area as a destination in its own right. The ...Plan emphasizes the importance of ensuring that the Ferry Building and environs are physically and visually integrated with their spectacular City and Bay settings, thus re-establishing the area as a gateway to the City. This includes extending the Port Walk through the area to provide more convenient, direct and aesthetically pleasing public access connections to open space and the Bay. The high cost of renovating the Ferry Building and other historic structures in the area will require the Port to pursue a mix of public and private resources in order to achieve an appropriate quality and mix of uses. Fortunately, because of its central downtown location, the Ferry Building Waterfront offers perhaps the best opportunity for a successful public and private partnership to provide new public amenities, jobs and other benefits to the Port, the City and the region." (Waterfront Plan, Executive Summary at p.10.); and

WHEREAS, The Waterfront Plan in the introduction to the Ferry Building Area also states:

"The bulkhead and connector structures of Piers 1 through 5 are visually connected with the Ferry Building, adding to the strong architectural and historic character of this area. These structures were also previously cut off from the City by the Embarcadero Freeway. These buildings, together with the Ferry Building and Agriculture Building, will be preserved according to the Secretary of the Interior's Standards for Historic Rehabilitation and will become even more prominent as a result of the roadway and open space improvements planned for the area. (Waterfront Plan, The Ferry Building Waterfront, p. 119); and

WHEREAS, The Waterfront Plan for the Ferry Building Area includes as an objective the provision of maritime facilities for ferry and excursion boats, recreational boats, historic ships and ceremonial berthing, stated as follows:

"In particular, because of its close proximity to transit and downtown, this area is a prime location for: ...(2) excursion boat operations that require high visibility and close proximity to downtown; (3) historic ships and ceremonial ships to draw people to the waterfront; and (4) recreational boat moorings to permit boaters to stop and enjoy downtown San Francisco for the day. Additionally, this area offers a prime opportunity to accommodate new modes of waterborne transportation, including water taxis ... because of its proximity to the downtown commuter, business and tourist centers." and

WHEREAS, The Waterfront Plan for the Ferry Building Area includes as another objective, to provide a mix of uses that emphasizes the civic importance of the area, generates waterfront activity and services San Franciscans and visitors alike, stated as follows:

"...the Ferry Building Waterfront should host an exciting array of maritime, commercial, civic, open space, recreation and other waterfront activities....The area should provide both a place for downtown workers to enjoy lunchtime or after hours activities, as well as a destination for other San Franciscans and visitors who might not ordinarily come to the area during the course of their daily routine. New uses should generate activity during evening and weekends to complement the weekday office uses in the adjacent downtown" and

WHEREAS, The Waterfront Plan for the Ferry Building Area includes as another objective the extension of the PortWalk through the area, providing more convenient direct and aesthetically pleasing public access connections to open space areas and the Bay; and

WHEREAS, The Waterfront Plan for the Ferry Building Area includes the following Development Standards:

- *Promote activities in and around Pier 1 and 3 which enhance, complement and benefit from the existing uses in the area and the transportation-related functions planned for the Ferry Building;*
- *Carefully locate any recreational boating activities to avoid navigation and operational conflicts with waterborne transportation;*
- *Encourage cafes along The Embarcadero to take advantage of afternoon sun on the north side of The Embarcadero and pedestrian activity on the PortWalk along the Embarcadero Promenade;*
- *Preserve the Piers 1, 1½, 3 and 5 bulkhead and connector buildings according to the Secretary of the Interior's Standards for Historic Rehabilitation and allow for improvements in visual and physical access to the waterfront as further described in the Waterfront Design and Access Element;*
- *Provide new uses near Pier 7 to further activate Pier 7 and take advantage of its prominence;*
- *Extend a waterside PortWalk from Pier 1 to the Promenade, where it would not interfere with ferry and excursion operations; and*

WHEREAS, The Port Commission is successfully implementing these objectives of the Waterfront Plan as described in more detail in Attachment 1, attached to this Resolution, and made a part hereof; and

WHEREAS, In order to further implement the objectives of the Waterfront Plan for the Ferry Building Area, the San Francisco Port Commission ("Commission")

wishes to preserve and restore the Piers Project pursuant to the objectives, development standards and design criteria set forth in the Waterfront Plan; and

- WHEREAS, The Piers Project are critically in need of rehabilitation, are currently condemned as being unsafe for occupancy, and approximately \$10 Million in substructure repairs alone; and
- WHEREAS, Since publication of the Waterfront Plan, the Piers Project has been listed on the National Register of Historic Places, as the Central Embarcadero Piers Historic District consisting of Pier 1, and Piers 1½, 3, and 5; and
- WHEREAS, On March 10, 2000, the Port issued a Request for Proposals ("RFP") to lease and develop the Piers Project; and
- WHEREAS, Three proposals were received in response to the RFP on August 31, 2000, and these proposals, as well as additional information requested by Port staff, were reviewed and evaluated by Port staff, including independent investigations by an outside team of qualified consultants; and
- WHEREAS, Based upon this review and evaluation, Port staff recommended the proposal from San Francisco Waterfront Partners, LLC ("SFWP") as best meeting the project objectives in the RFP, including having the least amount of new construction and office space in proportion to the public trust uses provided; and
- WHEREAS, The Port Commission, by Resolution No. 01-05, awarded to SFWP the opportunity to enter into an exclusive right to negotiate with the Port, which Exclusive Right has been extended through April 30, 2003 with an option to extend an additional three months if the Board of Supervisors has not approved the Lease by that time; and
- WHEREAS, During the term of the Exclusive Right, SFWP and Port staff have negotiated the terms of a Lease Disposition and Development Agreement ("LDDA") and 50-year Lease, with one 16-year option to extend the term (the "Lease"), and have developed the Schematic Drawings for the Piers Project consistent with the RFP and the Waterfront Plan Objectives, Development Standards, and Design Criteria applicable to the Ferry Building Area and the Piers Project; and
- WHEREAS, The Waterfront Plan identified historic preservation as the "central objective" for the Ferry Building Area because the Port's most significant historic resources are concentrated there, and preservation will ensure an aesthetic character that will promote maximum public use of the multi-million dollar, publicly funded, Downtown Ferry Terminal, waterfront transportation and public access and open space improvements; and

- WHEREAS, The Piers Project is of great historic importance both for its unique role in San Francisco's maritime history, as well as for its architectural merit; and
- WHEREAS, The Piers Project was originally constructed during the period between c.1890 and c.1925, and is typical of structures of the period, having a bulkhead front structure originally used for maritime-supporting office, and a rear finger pier, including railroad tracks entering through the major openings along the Embarcadero; and
- WHEREAS, Along with freight traffic, San Francisco's waterfront was the embarkation and debarkation point for many passenger vessels traveling throughout the waterways of California and the world, and Piers 1½, 3 and 5, in conjunction with Pier 1 and the Ferry Building, played important roles within the passenger transportation history of the waterfront, including serving as the home for two passenger shipping lines serving the interior of the state, from the Sacramento Delta to the San Joaquin and Sacramento Valleys; and
- WHEREAS, Piers 1½ and 3 are two of the oldest surviving structures along the San Francisco waterfront; and
- WHEREAS, The Pier 1½ shed is unique along the waterfront, constructed specifically to be a passenger waiting room, and from Pier 1 ½ and 3, passenger ships loaded and unloaded both passengers and freight, including the *Capital City* and the *Fort Sutter* and later the *Delta King* and *Delta Queen*, legendary paddle-wheel steamboats that ran overnight passengers from Sacramento to San Francisco from 1927 to 1940; and
- WHEREAS, As a group, the Piers Project, with their neo-classical bulkheads fronting on The Embarcadero, represent the most elaborate "City Beautiful" composition to be realized in San Francisco outside of Civic Center, a National Historic Landmark District, representing a substantial, significant, and largely intact portion of this original architectural composition; and
- WHEREAS, The Piers Project in their current dilapidated state are in risk of imminent collapse, and will be lost forever; and
- WHEREAS, The LDDA and the Lease present a rare opportunity to preserve an example of the maritime transportation terminal architecture of that era with its integrity of location, design, setting, materials, workmanship, and the presence of many of the original architectural features and details; and
- WHEREAS, Although historic preservation of the Piers Project adds substantially to the rehabilitation cost, such preservation is called for in the Waterfront Plan and Special Area Plan, and is supported by the San Francisco General Plan, which in its Urban Design Element calls for preserving notable landmarks of historical, architectural or aesthetic value, and the Commission concludes

that such rehabilitation is the highest and best use of the transferred lands consistent with the trust under which the lands are held; and

WHEREAS, The Port and SFWP are committed to a project that would meet the Secretary of the Interior's Standards and, therefore, be eligible for historic preservation tax credits, consistent with the Waterfront Plan and San Francisco General Plan policies intended to preserve the strong architectural and historic character of this notable historic district; and

WHEREAS, The abundant public open spaces and open water areas included as part of the Piers Project provide ample and unprecedented opportunities for the public to observe, enjoy and appreciate the historic elements of the Piers Project from all angles, including the following:

- *three public entries to Pier 1½ that provide access to both the Bulkhead Building and the old Delta Lounge, including a public access way between Piers 1½ and 3 that will be designated as a continuation of the Bayside History Walk from Pier 1, and which will be opened for pedestrian public access.*
- *the restoration of the Pier 1½ Historic Lobby that allows visitors to enter the building from The Embarcadero and access one of several public destinations: the proposed Oyster Bar within the Bulkhead Building, the Bayside History Walk extending from the south end of Pier 1½ to the northern end of Pier 3, the restaurant within the old Delta Lounge, the Pier 1½ water taxi and transient berthing dock, and the PortWalk.*
- *preservation of the historic façade of the Pier 1½ building, which will also be punctuated with windows on the north and south elevations compatible with the existing windows, allowing a strong visual connection between the public experiencing the PortWalk and the workings of the restaurant kitchen to be located there.*
- *provision of additional seating located to the east at the outdoor dining area that will allow the public to experience the maritime activities associated with the Bay, and view the interior of the old Delta Lounge as originally designed.*
- *restoration of the old Delta Lounge in accordance with its original historic fabric, including consideration of non-invasive, transparent structural and mechanical solutions within the space.*
- *design of the proposed PortWalk to separate public pedestrian users from private occupants and allow the public to view the waterside exterior elevations of Piers 1½, 3, and 5 and the existing interior structural and finish elements within the buildings, including visibility of the Pier 3 Shed Building's existing trusses and monitor, and Pier 5's wood timber structural system.*
- *use of the Bayside History Walk between the Bulkhead and Shed Buildings at Piers 1½ and 3 for display of historic images, models, interactive exhibits, and use of clear glazing to allow a visible*

connection through the glazing to the existing east façade of the Pier 1½ Bulkhead Building for the public to view.

- *preservation at Pier 3 of the interior wood trusses, which will be visible from the PortWalk and from the open portion of Pier 3 outside the Pier 3 Shed building at the east end.*
- *Restoration of the existing railroad tracks reminiscent of the cargo trains at Pier 3.*
- *renovation of the north end of Pier 5, conversion into a café with outdoor seating for the public, and design of the eastern facade wall to provide maximum visibility of the interior structure, consistent with the Secretary of Interior Standards; and*

WHEREAS, The proposed Piers Project offers major public access opportunities, including the following:

- *When complete, the Piers Project will increase existing public access areas by approximately 31,000 gsf, for a total of approximately 43,000 gsf of public access.*
- *the proposed design maximizes visual cues, physical openings and public-oriented commercial uses to encourage pedestrians to filter through the Bulkhead buildings to access the Bay.*
- *The Piers Project will complete a substantial piece of the Port's new bayside walkway, called the PortWalk, as called for in the Special Area Plan. The PortWalk will extend around the perimeter of the proposed project and is differentiated from other pedestrian ways by a stamped concrete decking surface.*
- *The northern entry to the PortWalk will begin at an improved and expanded public plaza at the foot of Pier 7, a popular public fishing pier. The Pier 7 Plaza provides access to the PortWalk and Pier 7, and is also an active public space. The PortWalk drops below the existing pier level and allows the public to walk closer to the Bay, observe the historic buildings both above and below deck; and*

WHEREAS, The Piers Project will promote important maritime activities, including the following:

- *The proposed project will add water taxi service, and will provide transient berthing to accept the loading and unloading of private boats.*
- *Public access to the FerryBoat Santa Rosa, a historic passenger ship, will be improved with the inclusion of a large glass wall, a café and a street-side ticket office at the northern entrance to Pier 3.*
- *The PortWalk will be designed to provide temporary and ceremonial berthing for historic ships and large visiting yachts.*
- *The Piers Project includes an estimated \$10 million of seismic and structural improvements, including repair of the Pier 3 marginal wharf and pier substructure that will preserve and improve access to the Pier*

3 Hornblower maritime complex, including the historic Ferry-Boat Santa Rosa, ensuring that the Port can retain maritime operations on Pier 3; and

- WHEREAS, The Piers Project will support many opportunities for public enjoyment of the waterfront, an important component of which is realized through waterfront-oriented cafés and restaurants that will attract visitors to the Bay, affording views of the Bay and the historic elements of the buildings; and
- WHEREAS, The Piers Project will allow the Port an opportunity to expand its administrative offices into the bulkhead buildings of Piers 1½ and 3, adjoining the Port's offices at Pier 1; and
- WHEREAS, Time is of the essence if efforts to rehabilitate the Piers Project consistent with historic preservation standards are to be accomplished with the least cost burden to public trust resources because any major rehabilitation of the facility has been deferred for many years to such a point that failure to rehabilitate the buildings in the very near future will mean permanent loss of these important historic structures; and
- WHEREAS, If the Port is unable to take advantage of private investment to rehabilitate the Piers Project, with sufficient economic potential to make its historic rehabilitation feasible, the facilities will not be restored and the proposed trust activities will not occur; and
- WHEREAS, The Waterfront Plan recognizes that the Ferry Building Area was uniquely appropriate to attract private capital to invest in historic preservation of maritime facilities due to the proximity to the San Francisco Financial District and the large public investment in nearby transportation and open space amenities; and
- WHEREAS, The mixed use occupancy of the Piers Project, as provided in the Lease, with mostly upper level offices and ground level, restaurant-oriented retail, would best support the trust objectives of preserving and rehabilitating the Piers Project and improving public access and use because it is the highest economic use consistent with the architectural limitations of this maritime and office facility which no longer requires the second floor shipping office facilities which it originally contained; and
- WHEREAS, Ground level restaurant-oriented commercial retail and dining establishments promotes the Port's overall program of improvements for the Ferry Building Area, integrating the facility with its spectacular City and Bay settings and re-establishing the area as a gateway to the City, by providing an attractive venue within which workers, residents and visitors to the City may find an intimate waterfront dining environment, transient berthing facilities for recreational vessels, and a high-quality public access network providing close views of the water and the historic structures; and

- WHEREAS, Office use at the Piers Project promotes the Port's overall program of improvements for the Ferry Building Area by providing expansion opportunities for the Port, creating new first class office space for other office tenants, which promotes the safety and security of the buildings, as well as providing users for the restaurants and public amenities provided by the Piers Project; and
- WHEREAS, The level of office use proposed is incidental to the myriad trust benefits provided within the Piers Project and the Ferry Building Area, and is a minor increase in the existing level of office space within the Piers Project, but is essential to the program for the rehabilitation of the Piers Project; and
- WHEREAS, The Commission must conserve Port revenues to subsidize those maritime uses and public improvements for which private investment is not economic and therefore the Port can not directly fund all necessary capital improvements to repair historic Port facilities such as the Piers Project (with an estimated project cost of \$44 million); and
- WHEREAS, The Port Commission has complete authority to do all things it deems necessary in connection with the use, conduct, operation, management, maintenance, regulation, improvement and control of the harbor of San Francisco which are not prohibited by State law or the City Charter and which are in conformance with the Burton Act, including reconstruction and repair of public or commercial buildings, preservation or restoration of marine resources, and the lease of said facilities for limited periods not exceeding 66 years for purposes consistent with the trusts upon which the lands are held by the State and with the requirements of commerce and navigation, all as provided in Section 3 of the Burton Act; and
- WHEREAS, The California Supreme Court has upheld the lease of trust lands to private interests to achieve trust purposes; and
- WHEREAS, Section 3 of the Burton Act authorizes the Port Commission to enter into 66 year leases provided that the revenues from such leases shall be used for purposes consistent with the trust; and
- WHEREAS, The Commission, by its approval of the LDDA, Lease and Schematic Drawings, is acting within the scope of the authority granted by Section 3 of the Burton Act because the LDDA, Lease and Schematic Drawings are necessary to accomplish the myriad goals of historic preservation, promotion of maritime uses, and promotion of public enjoyment of the waterfront, all in furtherance of the policies and objectives of the Waterfront Plan, which are purposes consistent with the trusts upon which the lands are held by the State and with the requirements of commerce and navigation, as well as with the Burton Act, and are not prohibited by State law or the City Charter; and in so finding the Commission is acting consistent with the

public trust doctrine as established in California case law and attorney general decisions; and

WHEREAS, Section 5 of the Burton Act provides that the Commission has authority to use revenues accruing from the use of the transferred lands for the purpose of reconstruction or repair of bulkheads and piers necessary for the development of the transferred lands for highest and best use in the public interest, provided that such purpose complies with the terms of the trust which are matters of statewide as distinguished from local or purely private interest and benefit; and to promote maximum public use of the transferred lands and encourage private investment in development of such transferred lands for the highest and best use in the public interest; and

WHEREAS, The Lease is for a term of 50 years, with one extension option of 16 years, and revenue from the Lease will be used for such purposes as may be established through the Port and City budget and fiscal process intended to ensure that Harbor Fund revenues are expended for trust purposes as required under the Burton Act; and

WHEREAS, The Commission, by its approval of the LDDA and the Lease, acts within the scope of authority granted by Section 5 of the Burton Act, because Port revenues derived from the transferred lands are being used:

- (1) to preserve, reconstruct and repair the Piers Project which (a) promotes statewide, as distinguished from local or purely private, interest and benefit by preserving and restoring an historically and architecturally significant maritime trust asset as part of an integrated and highly beneficial program of development of the Ferry Building Area intended to promote statewide interests by encouraging waterborne transit, improving navigation in the Harbor and enhancing public use and enjoyment by preserving the historic maritime aesthetic qualities of the Ferry Building Area properties, and (b) is necessary for the development of the Piers Project for the highest and best use in the public interest ---which is a unique mix of public trust uses described herein;
- (2) to promote maximum public use of the transferred lands in the Ferry Building Area by: (a) achieving the preservation of the historic Piers Project; (b) enhancing the public's enjoyment of the historic maritime aesthetic of the Ferry Building Harbor Area in general, and the Piers Project in particular; (c) creating additional public access through the interior and on the exterior of these historic structures, thereby achieving the Port's design plan for public access to the Ferry Building Area and attracting the public to enjoy the views of the harbor and to learn about and appreciate the historic maritime functions; and (d) providing ground floor uses drawing members of the public to enjoy the shoreline; and

- (3) to encourage private investment in development of such transferred lands for the highest and best use in the public interest by soliciting, through a competitive process, the participation of SFWP to fund the approximately \$44 million investment required to reconstruct and repair the historic maritime facilities for a unique mix of trust purposes; and

WHEREAS, The LDDA and the Lease are consistent with the Special Area Plan, and further the Special Area Plan's objectives by rehabilitating the historic buildings and providing significant public access, including the PortWalk and Bayside History Walk, as described above; and

WHEREAS, The Piers Project is generally consistent with the Waterfront Plan's designation of acceptable land uses for the Piers Project, including commercial uses such as assembly and entertainment, general offices, retail and recreation uses, visitor services, and public access, and the maritime components of the proposed Piers Project are consistent with the Waterfront Plan, which expressly permits maritime uses at any Port property; and

WHEREAS, The use of Pier 3 for general office requires an amendment to the Waterfront Plan "Ferry Building Waterfront Acceptable Land Use Table"; and

WHEREAS, Given the high level of trust-consistent uses within the Piers Project, the Port Commission finds that an incidental amount of office use located within the bulkhead buildings and on Pier 3 is essential to the program for the rehabilitation of the Piers Project, is a minor increase in the existing level of office space within the Piers Project, and the allowance of incidental office space within Pier 3 is consistent with the overall goals and objectives of the Waterfront Plan; and

WHEREAS, The use of Piers 1½ and Pier 5 for public access requires an amendment to the Waterfront Plan "Ferry Building Waterfront Acceptable Land Use Table" that would allow for public access on those Piers; and

WHEREAS, Because public access at Piers 1½ and Pier 5 is a major element of the Piers Project, and furthers the objectives of the Waterfront Plan and the Special Area Plan, the Waterfront Plan should be amended to allow for public access at Pier 1½ and Pier 5; and

WHEREAS, The Piers Project is consistent with the San Francisco General Plan's Northeastern Waterfront Plan ("Northeastern Waterfront Plan") objectives and policies designed to contribute to the waterfront's environmental quality, enhance the economic vitality of the Port and the City, preserve the unique maritime character, and provide for the maximum feasible visual and physical access to and along the Bay because the project rehabilitates the Piers Project and provides significant maritime opportunities for

recreational vessels and water transit, as well as supporting the excursion vessel activities at Pier 3; and

WHEREAS, The Piers Project is consistent with the Northeastern Waterfront Plan's Urban Design policies calling for retention of older buildings of architectural merit or historical significance to preserve the architectural and historical character of the waterfront and ensure the compatibility of new development, and, more specifically calling for retention of the Piers Project which policies are met by this project's adaptively reusing this historic structure consistent with the Secretary's Standards; and

WHEREAS, The LDDA provides for the close of escrow and initiation of construction on the Piers Project as early as June 1, 2003, in order to accomplish the objectives herein set forth; and

WHEREAS, The opportunity to preserve and restore the Piers Project will be lost if the rehabilitation work and lease-up is not accomplished as soon as possible; and

WHEREAS, The Commission hereby adopts the following findings with respect to the Final Mitigated Negative Declaration for the redevelopment of Piers 1 ½, 3 and 5 (the "Project"), case file no. 2001.0448E:

1. The San Francisco Planning Department ("Department"), fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et. seq. "CEQA", the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 et. seq., "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"), and

2. On April 20, 2002, the Department issued a Preliminary Negative Declaration, and in accordance with CEQA, the CEQA Guidelines, and Chapter 31, the Department posted the document in the Department offices, and mailed a copy of the document to the project sponsor. The Department provided notice of the preparation of the Preliminary Negative Declaration in a newspaper of general circulation and this notice was mailed to the Department's list of persons requesting such notice, and

3. In accordance with CEQA § 21091(b) and CEQA Guidelines § 15073, the Preliminary Negative Declaration was available for a 30-day public review period, and

4. Comment Letters were received in response to the Preliminary Negative Declaration from Hornblower Yachts, Inc., Tim Kelley, and the California Historical Resource Information System. The department

responded in writing to the letters, and comments from the letters were integrated into the Final Mitigated Negative Declaration, and

5. No appeal of the Preliminary Declaration was filed with the Department, and

6. The Department prepared the Final Mitigated Negative Declaration, which was adopted and issued on May 31, 2002; and

7. The Piers Project is within the scope of the Final Mitigated Negative Declaration, an addendum to the Final Mitigated Negative Declaration is not required and pursuant to CEQA Guidelines Sec. 15162, (1) no substantial changes are proposed which would require major revisions to the Final Mitigated Negative Declaration; (2) no substantial changes have occurred with respect to the circumstances under which the Project is being undertaken which would require major revisions in the Final Mitigated Negative Declaration; and (3) no new information of substantial importance, which was not known or could not have been known at the time the Final Mitigated Negative Declaration was adopted, has become available, and

8. Since the Final Mitigated Negative Declaration assumed that the rehabilitation of the Piers Project would comply with the Secretary of the Interior's Standards, and since the LDDA requires that the project qualify as a certified tax credit project meeting the Secretary of the Interior's Standards, the project will not result in any new significant impacts to cultural (historic and architectural) resources; and

WHEREAS, Port staff and SFWP have negotiated the terms of the LDDA and the Lease for the development of the Piers Project as a historic rehabilitation project with ground level commercial retail (restaurant use) and recreation and lower and upper level offices, the business terms of which are set forth in the memorandum for Agenda Item 5A for the Port Commission meeting of March 11, 2003; and

WHEREAS, As a material part of the negotiated transaction, Port staff and SFWP have negotiated the terms of a Parking Agreement coterminous with the Lease term, the business terms of which are set forth in the memorandum for Agenda Item 5A for the Port Commission meeting of March 11, 2003; and

WHEREAS, A copy of the proposed LDDA and its exhibits, including the Lease and the Parking Agreement, and the Final Mitigated Negative Declaration, is on file with the Commission Secretary; now; therefore, be it

RESOLVED, The Commission has reviewed and considered the Final Mitigated Negative Declaration and finds that it reflects the independent judgment and analysis of the Department, and the Commission finds that it is adequate, accurate,

and objective, and that there is no substantial evidence that the Project will have a significant effect on the environment, and hereby adopts the Final Mitigated Negative Declaration; and be it further

RESOLVED, The Commission hereby adopts the mitigation and improvement measures and the mitigation monitoring program prepared for the Project, and attached hereto as Attachment 2; and be it further

RESOLVED, That the Commission hereby amends the Waterfront Plan as follows:

1. On page 128 of the October 2002 Republished Version of the Waterfront Plan, 5th bullet under Ferry Building Mixed Use Opportunity Area Development Standards, revise last line to state:

“...stimulate reuse of ~~Piers 1 and 3~~ Piers 1, 1-1/2, 3 and 5.”

2. On The Ferry Building Waterfront Acceptable Land Use Table, page 126 of the October 2002 Republished Version of the Waterfront Plan, add “A” under General Office for Pier 3; add “A” under Public Access for Pier 5 Pierhead/Bulkhead; and add “A” under Public Access for Pier 1-1/2 Pierhead/Bulkhead;

and be it further

RESOLVED, That the Commission approves the form and substance of the LDDA and the Lease and the transactions which the LDDA and the Lease contemplate, incorporating the business terms set forth in the Memorandum for Agenda Item 5A for the Port Commission meeting on March 11, 2003; and be it further

RESOLVED, That the Commission approves the form and substance of the Parking Agreement and the transactions which the Parking Agreement contemplates, incorporating the business terms set forth in the Memorandum for Agenda Item 5A for the Port Commission meeting on March 11, 2003; and be it further

RESOLVED, that the Commission hereby approves the Schematic Drawings of the proposed Piers Project, as shown in the attachment to the Memorandum for Agenda Item 5A for the Port Commission meeting on March 11, 2003, a copy of which is on file with the Port Commission Secretary, and authorizes the Executive Director to approve non-material changes in the Schematic Drawings, including a change that would connect the PortWalk directly to the eastward side of the Piers Project buildings and eliminate the “leg” on the water taxi dock; and be it further

RESOLVED, That the Port Commission authorizes and directs the Executive Director of the Port (the “Executive Director”) to forward the Lease document and Parking Agreement to the Board of Supervisors for approval, pursuant to its

authority under Charter Section 9.118(c), and upon the effectiveness of such approval, to execute the LDDA, and subject to the terms of the LDDA, to execute the Lease, in substantially the form of such agreements on file with the Commission Secretary, and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, That the Executive Director shall determine satisfaction of the conditions precedent under the LDDA to the conveyance of the leasehold estate in the Piers Project site, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Lease; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the LDDA and the Lease (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the City, do not increase the rent or otherwise do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions which the LDDA and the Lease contemplate and effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the LDDA and the Lease and any such amendments thereto; and be it further

RESOLVED, That the Port Commission authorizes and urges the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including, but not limited to, the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions under the LDDA, in accordance with this resolution, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, That the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the Port Commission or the City with respect to the LDDA and the Lease.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 11, 2003.

Secretary

ATTACHMENT 1

FERRY BUILDING AREA PLAN IMPLEMENTATION

The San Francisco Port Commission has undertaken the following actions in furtherance of an overall program of harbor development for the Ferry Building Area consistent with Waterfront Plan policies and objectives:

To “[p]reserve and restore historic structures on the Ferry Building Waterfront, both to recall the area’s historic use and to accommodate new uses” the Commission has (1) entered into a Lease Disposition and Development Agreement and a Ground Lease with a competitively selected development team for the Ferry Building renovation consistent with Secretary of the Interior’s Standards for Rehabilitation, and the building has been completely rehabilitated at a cost of over \$80 Million; (2) entered into a Lease Disposition and Development Agreement and a Ground Lease with a competitively selected development team, AMB Property Corporation, for the historic preservation and adaptive reuse of Pier 1, and the building has been completely rehabilitated at a cost of over \$50 Million; (3) obtained approval for listing the Pier 1 bulkhead building and piershed, and the Piers 1 ½, 3 and 5 bulkhead buildings and piershed on the National Register of Historic Places; (4) received Pier 1 certification, or approval, for conformance with the Secretary of the Interior’s Standards for Rehabilitation and for Federal Historic Preservation Tax Incentives (20% rehabilitation tax credit); (6) selected a developer for the historic rehabilitation of Piers 1 ½ -3-5, consistent with the Secretary of the Interior’s Standards for Rehabilitation.

To “[p]rovide maritime facilities for ferry and excursion boats, recreational boats, historic ships, and ceremonial berthing” the Commission has (1) funded \$17 million and completed Phase I of the Downtown Ferry Terminal Project, adding two ferry berths, providing seismically secure access to those two and four other existing berths, and with Phase II, to be implemented as demand warrants, will add another four ferry berths; (2) endorsed the Bay Area Water Transit Initiative; (3) entered into a long-term lease with Hornblower Dining Yachts at Pier 3 to improve excursion boat opportunities in the Ferry Building area; (4) amended its related lease with Hornblower for the Santa Rosa, to assure the long-term continued presence of the historic ferry boat Santa Rosa at Pier 3; (5) has reserved to the Port the ability to control berthing of vessels for emergency, ceremonial and other purposes, and (6) has negotiated terms with the developer of Piers 1 ½, 3 and 5, for significant maritime amenities, including a public boat dock, recreational vessel mooring; and water taxi stand; and

To “[p]rovide a mix of uses that emphasizes the civic importance of the area, generates waterfront activity and serves San Franciscans and visitors alike” the Commission has: (1) dedicated land and entered into agreements with the City for the construction of the Mid-Embarcadero Improvements, the most important of which are a world-class public plaza on the land side of the Ferry Building and the extension of the Municipal Railway’s F Line to improve public access by providing an inviting and efficient light rail link along the waterfront in historic American and European streetcars; (2) entered into a Lease for the Ferry Building, which will establish a mix of public, retail, and commercial activities on the ground floor which will attract the public to use waterborne transportation at the Downtown Ferry Terminal and to enjoy the San Francisco waterfront, with commercial office uses in the upper floors to support the overall program; (3) finalized negotiations with a developer for Piers 1 ½ -3-5 to create

ground level uses that would attract the public to enjoy the waterfront; and (4) promoted waterborne transit and recreation through its commitments to ferry service, excursion and historic boats in the area; and

To “[e]xtend the Port Walk through the area, providing more convenient, direct and aesthetically pleasing public access connections to open space areas and the Bay” the Commission has: (1) obtained a BCDC permit for Phase I of the Downtown Ferry Terminal Project which allows for a new public passageway through the Ferry Building from The Embarcadero, and creates continuous perimeter public access around the Ferry Building linking all ferry berths for a total of 36,000 square feet of new public access linking the Embarcadero Promenade (Herb Caen Way) and the Bay, (2) completed State and Federal environmental and historic preservation reviews for Phase II of the Ferry Terminal which will add another 34,000 square feet of new public access linking Herb Caen Way and the Bay, (3) obtained a BCDC permit for Pier 1 which creates continuous pier perimeter public access and two segments of a “Bayside History Walk” within the building, for a total of 44,000 square feet of new public access linking the Embarcadero Promenade (Herb Caen Way) and the Bay, and (4) finalized negotiations with the developer for Piers 1½ -3-5 to extend the Bayside History Walk and PortWalk from Pier 1 to Pier 7, ensuring significant new public access consistent with the Port’s Waterfront Plan; and

To “[r]estore the Ferry Building Waterfront as a major transit center by improving transit access and transfers among water and land transportation modes” the Commission has: (1) dedicated public access and completed the Downtown Ferry Terminal improvements described above, (2) promoted intermodal transit connections by incorporating Amtrak’s San Francisco station into first the Ferry Building and presently the Agriculture Building, (3) assisted the Golden Gate Bridge, Highway and Transportation District and the City of Vallejo in providing landside bus service in association with their ferry operations, and (4) has worked with the City and County of San Francisco (“City”) to provide the historic streetcar “F-Line” in the median of The Embarcadero, the adjoining bicycle lanes, the generous Herb Caen Way pedestrian promenade, and the trackage connection between the F-Line and the MUNI Metro extension on The Embarcadero to enable a future “E-Line” running the length of The Embarcadero; and

To “[p]rovide efficiently planned parking and loading facilities to serve new activities in the area”, the Commission has: (1) included parking, loading and passenger pick-up/drop-off bays on The Embarcadero, (2) is actively seeking parking solutions in the area, including potential sites at Assessor's Block 202 and Seawall Lot 351; and

To “[p]hysically and visually integrate the Ferry Building and environs with their spectacular City and Bay settings”, the Commission has approved a Mid-Embarcadero design that creates strong connection with the adjoining Financial District and improved public access from Market Street to the Bay, with improvements such as decorative lighting, paving, railings, benches and other amenities to enhance the connections with the Bay; and

To “[p]ursue a mix of public and private resources to achieve an appropriate quality and mix of uses”, the Commission (1) has pursued the above-cited improvements for the Downtown Ferry Terminal Project and Embarcadero Roadway Project, (2) has entered into the above-cited leases with Hornblower Dining Yachts, (3) has entered into a Development Agreement and 50-year lease for Pier 1, pursuant to which the developer

has successfully rehabilitated Pier 1 consistent with Secretary of Interior Standards, provided the Port with publicly-accessible offices, and continued the existing café use, (4) has entered into a Development Agreement and 66-year Lease with a private developer, who has successfully completed the historic rehabilitation of the Ferry Building to achieve maximum public use and the highest and best use in the public interest; and (5) has finalized negotiations for a Development Agreement and 50 year lease, with one 16 year option to extent the term, with a private developer for the historic rehabilitation of Piers 1 ½, 3 and 5.

Piers 1-1/2, 3, and 5 Project

MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measure	Text	Party Responsible for Mitigation	Party Responsible for Monitoring	Timing
NOISE				
1 (Hours for Pile-Driving)	The project sponsor shall require the construction contractor(s) to limit pile-driving activity such that it results in the least disturbance to occupants and users of adjacent and nearby properties. Implementation of this measure may require the construction contractor(s) to obtain a permit for nighttime work from the Port Building Department if pile-driving during nighttime hours would be the least disruptive to these occupants and users.	Project Sponsor and Construction Contractor	Port: Engineering and Real Estate	During construction
2 (Hydraulic or Vibratory Pile Driver)	The project sponsor shall require the construction contractor(s) for the proposed project to use an hydraulic or vibratory pile driver, if feasible, and to use a state-of-the-art muffler and shield around the pile driver.	Project Sponsor and Construction Contractor	Port: Engineering and Planning & Development	During construction
3 (Notification of Pile-Driving)	At least 48 hours prior to pile-driving activities, the project sponsor shall notify building owners and occupants within 200 feet of the project site of the dates, hours, and expected duration of such activities.	Project Sponsor	Port: Planning & Development and Real Estate	Project Sponsor shall submit proof of notification prior to start of pile-driving activities.

Piers 1-1/2, 3, and 5 Project

MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measure	Text	Party Responsible for Mitigation	Party Responsible for Monitoring	Timing
BIOLOGY				
4 (Herring)	To reduce potential impacts to Pacific herring during construction of the project, the project sponsor shall implement one of the following measures: 1) The project sponsor shall avoid pile-driving during Pacific herring spawning season (December 1 through March 31); or 2) If pile-driving in-water construction activities cannot be scheduled to avoid spawning season, the project sponsor shall enter into an agreement with the California Department of Fish and Game (CDFG), and a trained herring observer shall be employed with the authority to suspend construction if spawning activity is observed within a radius specified by CDFG.	Project Sponsor	CDFG and Port: Planning & Development	If pile driving cannot be avoided during the December 1-March 31 period, the project sponsor shall submit the required agreement with CDFG to the Port prior to the start of pile-driving activities.

Piers 1-1/2, 3, and 5 Project

MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measure	Text	Party Responsible for Mitigation	Party Responsible for Monitoring	Timing
5 (Bats)	Prior to demolition or renovation of any abandoned building between August 15 and October 15, or between February 1 and May 1, survey(s) shall be conducted during the same period by a qualified bat biologist. If no Townsend's western big-eared bats are found during the survey(s), no additional mitigation is required. If a Townsend western big-eared bat is found during an August to October survey, appropriate exclusion devices approved by CDFG and U.S. Fish & Wildlife Service (USFWS) shall be installed by a qualified bat biologist. Once the bats have been excluded, demolition may proceed. If Townsend's western big-eared bats are found during a February to May survey, demolition shall not take place until the end of the nursery season in August. Exclusion devices shall be placed by a qualified bat biologist in accordance with CDFG and USFWS.	Project Sponsor	Port: Environmental	Prior to demolition or renovation occurring between August 15 and October 15, or between February 1 and May 1
HAZARDOUS MATERIALS				
6 (Hazardous Building Materials)	All structures expected to have building materials removed during renovation or demolition should be inspected for hazardous building materials by a qualified inspector. Any PCB-containing equipment should be removed and properly disposed of, pursuant to the applicable federal, state, and local standards. Any creosote-soaked wood piles that are removed	Project sponsor and Construction Contractor	Port: Engineering and Environmental	Prior to the issuance of a demolition permit, the project sponsor shall submit proof that the project site has been

MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measure	Text	Party Responsible for Mitigation	Party Responsible for Monitoring	Timing
6 (cont.)	shall also be properly disposed of in accordance with applicable standards.			inspected and that all hazardous building materials have been identified. Prior to the issuance of a temporary certificate of occupancy, the project sponsor shall submit proof that all hazardous materials have been removed and properly disposed of in accordance with federal, state, and local standards.

MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measure	Text	Party Responsible for Mitigation	Party Responsible for Monitoring	Timing
CULTURAL RESOURCES				
7 (Secretary Standards for Rehabilitation)	The project sponsor shall ensure that the proposed project complies with the Secretary of the Interior's <i>Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings</i>. Prior to issuance of any building or demolition permit for the project, the project sponsor shall submit to the Port of San Francisco a copy of the Part II application that includes determinations from National Park Service (NPS) and State Historic Preservation Office (SHPO). The determinations shall confirm that the proposed rehabilitation would be consistent with the <i>Standards for Rehabilitation</i>, or would be consistent with the <i>Standards for Rehabilitation</i> with the implementation of certain conditions to which the project sponsor has agreed. If NPS and/or SHPO determines that the proposed rehabilitation would not be consistent with the <i>Standards for Rehabilitation</i> or if the project sponsor does not agree to any conditions required by NPS and/or SHPO to ensure consistency with the <i>Standards for Rehabilitation</i>, the project shall become subject to further environmental review by the City and County of San Francisco. In this circumstance, the project sponsor shall implement the following actions: The project sponsor shall notify the Planning Department's Environmental Review Officer (ERO) at the earliest opportunity of this project change. After notifying the ERO, the project sponsor shall retain the	Project sponsor	S.F. Planning Department (ERO) and Port: Planning & Development	The Port shall not issue a building or demolition permit for the project until the project sponsor submits proof that the National Park Service (NPS) and the State Historic Preservation Office (SHPO) have determined that the proposed rehabilitation meets the <i>Standards for Rehabilitation</i>. If the NPS or SHPO determines that the proposed rehabilitation would not be consistent with the <i>Standards for Rehabilitation</i> or if the project sponsor does not agree to any conditions required by NPS or SHPO to ensure consistency with the <i>Standards for Rehabilitation</i>, the

MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measure	Text	Party Responsible for Mitigation	Party Responsible for Monitoring	Timing
7 (cont.)	services of a qualified historic preservation consultant to assist the Planning Department in determining whether the proposed project meets the <i>Standards for Rehabilitation</i>. The historic preservation consultant shall prepare a draft historical resource evaluation report containing an assessment of the proposed project's consistency with the <i>Standards for Rehabilitation</i> and, if warranted, making recommendations for project modifications that would ensure consistency with the <i>Standards for Rehabilitation</i>. Based on this report and consultation with any departments, agencies, boards, or individuals deemed appropriate by the ERO, the ERO shall recommend, if warranted, project modifications to be implemented by the project sponsor. The project sponsor shall incorporate any recommended project modifications into the project design. Copies of the draft historic resource evaluation report prepared pursuant to this mitigation measure shall be submitted first and directly to the ERO for review. Following approval by the ERO, copies of the final report shall be sent to the project sponsor and the Port of San Francisco (the Port). The ERO shall receive three copies of the final report. The Port shall not issue a building permit for construction of the proposed project until the above conditions of this mitigation measure are satisfied.			project sponsor shall notify the Planning Department's ERO, who will coordinate the follow-up actions to ensure that the City is satisfied with the proposed rehabilitation.

Piers 1-1/2, 3, and 5 Project

MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measure	Text	Party Responsible for Mitigation	Party Responsible for Monitoring	Timing
8 (Archaeology)	Should evidence of an archaeological resource be encountered within Bay deposits in conjunction with activities of the proposed project, any activity that may adversely affect the potential archaeological resource shall be suspended and the project sponsor shall immediately notify the Planning Department's Environmental Review Officer (ERO). After notifying the ERO, the project sponsor shall retain the services of an archaeological consultant to assist the Major Environmental Analysis Division in determining the significance of the find. The archaeological consultant shall prepare a draft report containing an assessment of the potential significance of the find and, if warranted, make recommendations of actions that would minimize potential adverse effects on archaeological resources. Based on this report, the ERO would recommend, if warranted, specific additional mitigation measures to be implemented by the project sponsor. Mitigation measures might include additional investigations or data recovery by the archaeological consultant. The treatment of Native American human remains and of associated or unassociated funerary objects discovered shall comply with applicable State laws including notification of the Coroner of the City and County of San Francisco and of the California State Native American Heritage Commission (NAHC). Following completion of any archaeological program resulting from this mitigation measure, including programs of resource identification, recovery, evaluation, analysis, and/or interpretation, the archaeological consultant shall prepare a draft report documenting the archaeological resource(s) that was	Project Sponsor and Construction Contractor	S.F. Planning Department (ERO) and Port: Planning & Development	During construction

MITIGATION MONITORING AND REPORTING PROGRAM				
Mitigation Measure	Text	Party Responsible for Mitigation	Party Responsible for Monitoring	Timing
8 (cont.)	discovered, an evaluation as to its significance, and a description as to methods and strategies used in the archaeological field/laboratory/research program. Copies of the draft final archaeological report prepared according to this mitigation measure shall be submitted first and directly to the ERO for review. Following approval by the ERO, copies of the final report shall be sent to the project sponsor, the Port of San Francisco, the President of the Landmarks Preservation Advisory Board, and the California Archaeological Site Survey Northwest Information Center. The ERO shall receive three copies of the final archaeological report.			

MITIGATION MONITORING AND REPORTING PROGRAM					
Improvement Measure	Text	Party Responsible to Perform	Party Responsible for Monitoring	Timing	
IMPROVEMENT MEASURES					
TRAFFIC					
1 (Loading/unloading)	In order to ensure that adequate space is provided for truck loading/unloading facilities, at least 60 feet of the recessed curbside bay between Pier 3 and Pier 5 shall be designated for truck loading/unloading and passenger drop-off and pick-up only. Signage designating this area for truck loading & unloading and passenger drop-off and pick-up shall be posted.	Project Sponsor	Port: Real Estate and Planning & Development	During term of leasehold	
2 (Traffic Congestion)	The project sponsor and construction contractor(s) will meet with the Port's Building Department and the Port's Real Estate Division to determine feasible measures to reduce traffic congestion, including potential transit disruption and pedestrian circulation impacts during construction of the project. Measures to be considered may include limiting construction truck movement to off-peak hours.	Project Sponsor, Construction Contractor and Port	Port: Real Estate and Engineering	During construction	
AIR QUALITY					
3 (Particulate Emissions)	The project sponsor shall require the construction contractor(s) to spray the site with water during demolition and construction activities; cover stockpiles of demolition material; cover trucks hauling debris or demolition material; and sweep surrounding streets during demolition at least once per day to reduce particulate emissions. Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust-control activities. Therefore, the project sponsor shall require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose.	Project Sponsor and Construction Contractor	Port: Engineering	During construction	

MITIGATION MONITORING AND REPORTING PROGRAM

Improvement Measure	Text	Party Responsible to Perform	Party Responsible for Monitoring	Timing
3 (cont.)	The project sponsor shall require the project contractor(s) to maintain and operate construction equipment so as to minimize exhaust emissions of particulates and other pollutants, by such means as a prohibition on idling motors when equipment is not in use or when trucks are waiting in queues, and implementation of specific maintenance programs to reduce emissions for equipment that would be in frequent use for much of the construction period.			
BIOLOGY				
4 (Construction Debris and Demolition Plan)	Prior to project construction, the project sponsor, in cooperation with the Port's Building Department, the Port's Environmental Division, and the San Francisco Fire Department, will prepare a construction debris and spill containment plan to address the special problems associated with removing debris and managing spills of petroleum products or other hazardous substances during project construction. The debris and spill containment plan shall be incorporated into the construction specifications for the proposed project.	Project Sponsor, and Port	S.F.F.D. and Port: Environmental, Engineering and Planning & Development	Prior to project construction

H/Jennifer/MM Report - P1.5,3,5.doc Rev. 1/10/03

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SAN FRANCISCO PORT COMMISSION

MARCH 11, 2003 MINUTES OF THE REGULAR MEETING

MEMBERS, PORT COMMISSION

HON. MICHAEL HARDEMAN, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. DENISE McCARTHY
HON. BRIAN McWILLIAMS

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

DOCUMENTS DEPT.

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PORT COMMISSION

MINUTES OF THE MEETING MARCH 11, 2003

1. ROLL CALL

Commission President Michael Hardeman called the meeting to order at 4:05 p.m. The following Commissioners were present: Michael Hardeman, Kimberly Brandon, Denise McCarthy and Brian McWilliams

2. APPROVAL OF MINUTES - February 27, 2003 Special Meeting

ACTION: Commissioner Brandon moved approval; Commissioner McCarthy seconded the motion. All of the Commissioners were in favor. The minutes of the February 27, 2003 Special meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report

- Ferry Building Re-Opening

Mr. Wong reported that after two years of construction and an estimated \$85 million in renovations, the doors to the historic Ferry Building will soon be open to the public again. The civic ceremony to celebrate the re-opening of the Ferry Building has been postponed until late summer. This will allow more time for the new marketplace tenants to build out their spaces and move into the landmark building. Starting at 6 a.m., on Friday, March 21, 2003, the east and west passthroughs at the Ferry Building will be open to ferry commuters and the general public. Ferry riders no longer will have to walk around the building, as the newly opened passways will allow passengers to walk directly through the building from the Ferry Terminals to the Embarcadero. Peete's Coffee, the first marketplace tenant to move into the Ferry Building, will serve free coffee to ferry commuters on the morning of March 21st. Staff will inform the Commissioners when a date has been set for the dedication ceremony and public celebration.

Commissioner Hardeman indicated that the first Commission meeting at the Ferry Building would be delayed until such time that the construction is completed for the safety of those people who will be attending the meeting.

4. REAL ESTATE

- A. Request for approval of proposed Assignment and Assumption of Lease No. 12392 and 12460 (the Lapis Restaurant) from Bistro Z, LLC to "Newco," a to-be-formed California corporation, and Modifications to Said Leases. (Resolution No. 03-19)

Carol Anderson, Assistant Deputy Director, presented the item and requested Commission's approval.

Commissioner McWilliams inquired if Pier 33 is part of the maritime reserve. Ms. Anderson replied that Pier 33 itself is adjacent to the south of the restaurant; it is a fisheries maritime pier. The footprint will remain the same. The restaurant will be located on the south side of the Pier 33 bulkhead.

In response to Commissioner McCarthy's question regarding the free rent during the construction period, Ms. Anderson replied that rent will indeed be free from March 1st until the document is executed, approximately six weeks.

ACTION: Commissioner McCarthy moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor. Resolution No. 03-19 was adopted.

5. PLANNING & DEVELOPMENT

- A. Request for adoption of Mitigated Negative Declaration and Mitigation Monitoring Program; Approval of Lease Disposition and Development Agreement and Lease with San Francisco Waterfront Partners, LLC for the development and historic rehabilitation of Piers 1½, 3 & 5 located between Washington Street and Broadway; Approval of Schematic Drawings; and Approval of Related Amendments to the *Waterfront Land Use Plan*. (Resolution No. 03-17)

Jennifer Sobol, Planning & Development, indicated that Port staff commenced working with the Ferry Building Waterfront Advisory Group in October 1999, seeking its input and guidance in formulating a development concept for Piers 1½, 3 & 5. The Advisory Group completed its work in December 1999, recommending a development concept which Port staff brought before the Commission for its consideration and approval. Thereafter, the Port Commission authorized issuance of an RFP in March 2000. The Port's primary goals for this development as stated in the RFP were as follows: (1) To create an inviting mixed-use project which will help attract the public to the bay and enhance their waterfront experience; (2) To preserve and rehabilitate the historic waterfront maritime buildings on the site; and (3) To provide rental revenue to the Port to support its public trust mandate. The RFP requested a design that respects the character of the Ferry Building waterfront area, brings new commercial and maritime activity to this area and maximizes public access to and enjoyment of the project's beautiful waterfront setting. Staff received three proposals and selected San Francisco Waterfront Partners which was awarded Exclusive Negotiation Rights. Its proposal was deemed to best satisfy the combination of planning, design and public access objectives set forth in the RFP. The proposal was also selected because of the extent of public serving amenities that it provided which met or exceeded the objectives of the RFP, because it offers the greatest quantity and quality of required and encouraged uses and because of the amount of development cost projected to be spent in order to provide these uses. The Port's Building Department condemned the piers in December 2000 because of the deteriorated condition of the substructure. The tenants vacated the facility and the Port received no income from the site since that time. The project is set forth in the scope of development, which is attached to the LDDA. The

developer will undertake the redevelopment and historic rehabilitation of the site, restore the buildings, add new uses and rehabilitate it according to the Secretary of the Interiors Standards for Rehabilitation and Preservation of Historic Buildings. Compliance with these standards will allow the developer to take advantage of the 20% federal historic preservation tax credit. The project will encompass food and dining establishments, Class A office space, ticket office for Hornblower, public access including a continuation of the Portwalk and the Bayside history walk, a boat dock at Pier 1½ for the public to use; a water taxi landing and docking facilities at Pier 5. Schematic drawings were presented and approved by the Waterfront Design Advisory Committee (WDAC) last May. They were also reviewed and approved by the Design Review Board (DRB) of BCDC.

Simon Snellgrove, managing partner of San Francisco Waterfront Partners, showed the Commission the schematic drawings of the project. He showed the mixed-use components of the project that will attract people to the waterfront and enjoy the bay. A popularly priced hamburger café, Harry Bridges Café will be located at the site. Next to it would be Hornblower's proposed ticket office. However, they are in discussions with Hornblower to relocate the ticket office so they can put a coffeehouse with outdoor seating overlooking the water. If Hornblower agrees to their proposal, the next space would be their ticket office and a retail outlet that will support their ferryboat operation. The site will become a public facility with bicycle racks, lockers, restrooms, etc. The old historic lobby on Pier 1½ is going to have restrooms. There will be a relaxed informal oyster bar leading to a seafood restaurant with an outdoor deck. There will be public access called the portwalk. They have taken the vocabulary of the Pier 7 fishing pier and turned it along the water. They will provide berthing spaces for a short term up to two weeks and will be made available for people who want to use it for maritime functions. There will be ceremonial berths for some excursion boats but there will not be dining yachts so as not to compete with Hornblower's business. The portwalk will continue around the perimeter of the Pier 3 remnant and around the perimeter of Bill Turnbull's old office, the Delta Ferry waiting room. They are adding a dock, free of charge, for people who want to berth their boat for up to 24 hours and use the restaurant. They are providing a water taxi landing free of charge. There will be approximately 36,000 s.f. of public access. There will be a historic walk that will continue along the bulkhead through the Pier 3 shed and join up with the portwalk along the piers. They have been in discussions with representatives of the Industrial Light and Magic to do an interactive display model of the old Delta Queen and Delta King. There will be approximately 69,000 s.f. of office space. The new office space will be located on the second floor of the Pier 3 remnant shed. The main access point for Hornblower's ferry activity will be of European façade design. They will completely restore the buildings. They are in discussions with the National Park Service and the State Historic Preservation Office (SHPO) regarding minor modifications such as incorporating a bridge. They are removing the old remnant building that is slightly leaning between Piers 3 and 5 to open up access and views to the bay. The WDAC would not permit them to put up any trees. The back of Pier 5 will be glazed in the area where the old shed used to be in order to provide views to the Bay. Mr. Snellgrove thanked Port staff for their cooperation and acknowledged the work that they have done thus far.

Jennifer Sobol mentioned that the WDAC reviewed and approved the schematic drawings in May. However, she noted that SFWP presently is undergoing value engineering for the project. As a result, there may be revisions to the current schematic drawings, including

connecting the portwalk directly to the eastward side of the piers project buildings and eliminating the "leg" on the water taxi dock. These changes will address concerns raised by the State Lands Commission and by Hornblower. If so, revised schematic drawing will need to be reviewed and approved by the WDAC. If the Port's Executive Director determines that such revisions are material, SFWP will seek Port Commission approval of the revised schematic drawings. If the revisions are determined to be not material, SFWP will be allowed to proceed with the construction drawings.

Ms. Sobol showed the Commission the current layout. The proposal shows the location of the Pier 1½ dock area. The "leg" has been removed from the water taxi landing. The proposal shows Hornblower's amendment to include barges that they recently purchased and it shows the layout of the boat. They are still working on the layout to address all of the issues between the two parties and BCDC. Piers 1½, 3, & 5 are now listed on the National Register of Historic Places as the Central Embarcadero Piers Historic District.

However, certain approvals must be obtained, which are listed on the staff report, before construction can proceed. Those approvals are necessary to close escrow and start construction by July 2003. Staff expects construction to be completed by July 2005.

The San Francisco Planning Department issued a Mitigated Negative Declaration on May 31, 2002 regarding the project. The negative declaration finds that the project will not have a significant effect on the environment and identifies certain Mitigation and Improvement Measures to avoid potential significant negative effects. Before the Port Commission can approve any agreements with SFWP, it must consider and adopt the findings of the Mitigated Negative Declaration and adopt the Mitigation Monitoring and Report Program. Ms. Sobol requested Commission's approval of the LDDA including all of the attachments and the lease including all the exhibits. The lease is an attachment to the LDDA. The LDDA will be signed by the Port following its approval by the Port Commission and following approval of the Lease by the Board of Supervisors. The LDDA will go into effect immediately upon execution by the Port and SFWP, but the lease will not go into effect until certain conditions are satisfied. Once those conditions are met, the fully executed lease will be delivered to the parties through an escrow. The lease will become effective immediately when it is delivered to SFWP, after which construction may begin. The lease will expire 50 years following the commencement date of the lease or 66 years thereafter if the tenant exercises the extension option. The LDDA, however, will expire upon completion of construction. For the period of construction, there will be an overlap where both the LDDA and the lease are in effect. The LDDA provides SFWP with the certainty it needs in order to invest further in the design and approval process for the project and to finalize the project financing. The LDDA also protects the Port in that the Port does not have to deliver the lease unless and until certain conditions are satisfied. The terms of the lease are also set forth in the staff report but she highlighted the important terms of the lease.

The premises will consist of the Pier 1½, 3 and 5 bulkhead buildings, the shed remnant at Pier 3, the structure behind the Pier 1½ bulkhead, water areas adjacent to Pier 1½ and Pier 5 (restricted berthing areas), an area on the sidewalk north of Pier 5 and an area on the Embarcadero Promenade in front of Pier 3, both for outdoor café seating. The Port shall have an option to expand its current premises at Pier 1 into the 2nd floor of the Pier 1½ and

Pier 3, which space is contiguous to the Port's offices. This expansion option will be approximately 3,132 square feet and is exercisable at market rental rates whenever the space becomes available, but not more than every ten years. The term of the lease is 50 years plus a 16-year option to extend. Uses that are allowed under the lease are food and beverage, general office, maritime office, public access, sales ticket office, temporary berthing, ceremonial berthing, water taxis, retail and excursion boats but not dining excursion if approved by the Port Commission. The developer will have to seek Commission's approval for the amount of participation rent for the excursion use and the size of the vessels. Subject to amendments to the existing Hornblower lease, the Port has agreed for the term of the lease to prohibit construction of any permanent structures at Pier 3, in Hornblower's leasehold, in area extending from the Pier 3 lease line to the end of the Ferryboat Santa Rosa. The minimum rent to the Port will be \$500,000 per year (before rent credits) payable in monthly installments of \$41,666.67. There will be no minimum rent during the construction period. Rent commences when a certification of occupancy is issued or 24 months after the lease commences, whichever occurs first. The minimum rent will be increased every five years after the rent commencement date according to the Consumer Price Index (CPI), with a minimum increase of 10% and a maximum increase of 20%. The minimum rent will also be adjusted at the end of the 20th and 40th years and at the end of the original 50 year term if the option to extend is exercised, to the greater of: (1) the minimum rent using the CPI or (2) 85% of the average annual minimum rent and percentage rent during the 10-year period preceding the adjustment date. In addition, the developer will pay the Port 15% of the tenants' gross rental income from the project earned during each lease quarter, offset by minimum rent payable to the applicable quarter. The Port will also participate in the net sales proceeds, 15% of net proceeds from all sales and the lease provides the formula for calculating both initial and subsequent sales. The agreement also provides a card check. The developer is required to comply with the employee signature authorization ordinance which requires employers of restaurant operations on public property with more than 15 employees to enter into a card check agreement. Because of the badly deteriorated condition of the substructure at the site, a substantial amount of the construction cost is attributable to the repair and seismic upgrading of the substructure. Under the lease, SFWP will be reimbursed for the substructure costs up to a maximum amount of \$10 million by means of rent credits applied to minimum and percentage rent due the Port above \$50,000 per year. After the rent credits are amortized, the Port's participation will include guaranteed minimum rent versus percentage rent calculated on the gross rental revenues of the project, plus participation in net proceeds from future sales of the leasehold. The maximum period for amortizing the rent credits is 15 years. It is expected that the developer will require 13-15 years to amortize the cost of the substructure improvements. During this amortization period, the Port will receive only \$50,000 per year after rent credits. However, following the amortization period in year 16, guaranteed minimum rent is projected at \$864,000 and minimum and percentage rents are projected to total up to \$1 million. Assuming a sale of the leasehold in year 15, the Port's participation in the net sales proceeds is projected to be \$.5 to \$2 million. The development costs, which were originally projected at approximately \$42 million, are now projected at approximately \$44 million. This transaction is not structured to provide SFWP with a preferred return on these costs, and SFWP therefore is assuming the development cost risk, among other development risks. However, SFWP will retain all proceeds from the sale of historic tax credits, and will receive rent credits for the cost of substructure work up to a maximum of \$10 million.

In addition to the revenue that the Port will receive, other benefits that the Port will realize from the project are as follows:

- Renovating, repairing, restoring and rehabilitating Piers 1½, 3 and 5, thus saving these significant historic maritime resources.
- Avoiding the cost to repair or demolish these condemned facilities.
- Rehabilitating the piers consistent with the Secretary of Interior's Standards for Rehabilitation.
- Implementing the goals and objectives of the Port's Waterfront Land Use Plan as stated in the RFP.
- Seismically upgrading the piers.
- Placing the piers on the National Register of Historic Places.
- Supporting maritime commerce by building a new public boat dock, allowing for temporary berthing, ceremonial berthing and water taxi service.
- Providing public access to the bay.
- Attracting visitors to the waterfront.
- Continuing Portwalk and Bayside History Walk.
- Allowing the Port to expand its administrative offices if necessary.

Staff believes that the project is a win-win for the developer, the Port and the community. Ms. Sobol mentioned the following agreements which are part of the transactions:

- (1) Parking agreement – the Port has negotiated on SFWP's behalf for Hornblower to provide 25 parking spaces to SFWP at Pier 3 for the term of Hornblower's lease. If a parking garage is built nearby, 20 of the spaces may be transferred to the garage. For the term of SFWP's lease, the Port agrees to license 5 spaces to SFWP at Pier 3 and 20 spaces at either Pier 3 or in a nearby parking garage, if built. These spaces are for use by the project's subtenants and customers only. The rental rate will be market, determined annually by the Port.
- (2) Construction parking agreement – the Port will provide construction parking at reduced rates, in locations near the site to meet union requirements, for construction workers during the construction period. The terms of the agreement will be negotiated before close of escrow and memorialized in a separate construction parking agreement.
- (3) Permit to Enter – the Port will grant SFWP a Permit to Enter for construction staging and materials laydown on Port property (water and sidewalk areas) during the construction period.
- (4) Amendments to Hornblower's Leases – In order to provide certain assurances sought by SFWP governing the relationship between SFWP and Hornblower, Port staff and Hornblower will execute amendments to Hornblower's leases. Any amendments to Hornblower's leases shall be subject to Port Commission approval. Staff will have another opportunity to present the status of the negotiations. In order to p

Ms. Sobol indicated that the proposed project is consistent with the Waterfront Land Use Plan (WLUP) except for the office use at Pier 3 and the public access at Piers 1½ and 5. Staff is requesting amendment of the plan to allow office use at Pier 3 and public access at Piers 1½ and 5. Ms. Sobol requested Commission's approval of the mitigated negative declaration and mitigation monitoring program, approval of the LDDA and attachments,

approval of the lease and exhibits, approval of the schematic drawings and approval of amendments to the Waterfront Land Use Plan. She thanked and acknowledged Port staff for their hard work and assistance on this project: Kirk Bennett, Neil Sekhri, John Davey, Nic Dempsey, David Beaupre, Diane Oshima, Mark Paez and Dan Hodapp.

Nic Dempsey discussed the Hornblower lease negotiations. The Real Estate department initially took upon itself to analyze the over 8 leases between the Port and Hornblower affecting their operations in various locations along the waterfront, their relationship to the Port's previously approved and to be approved projects at the Ferry Building, Pier 1, Piers 1½, 3 and 5 and the Mills project at Piers 27-31. Staff spent over four months listening to the needs of Hornblower and the needs of the developer partners and understanding that there is no such thing as a perfect world trying to find a happy balanced between the needs of the Port and its tenants. The Port proposed 40 substantive modifications to Hornblower's leases including the lease at Pier 3 and the now expired leases that are month-to-month holdovers at Piers 31, 31-½ and 33. It is staff's firm conviction that the needs of the Port, the Hornblower and the SFWP can be and will be met prior to the close of escrow. The developer has shown remarkable adaptation in terms of its redesign of its docks to accommodate the maritime needs expressed by Hornblower as analyzed and reviewed by the Port and its maritime staff. It has shorten the dock, it eliminated finger piers. They have agreed to certain other features to allow for the continuous operation of Hornblower during the construction phase. Staff has agreed to extend the now-expired leases at Pier 31-½ so that Hornblower may continue its current operation for the California Hornblower and the Monte Carlo at Piers 31-½ during the construction period not only of the Pier 1½, 3 and 5 project but of Hornblower's ongoing construction of its berthing improvements and public access improvements. Staff has agreed to consider a modification of Hornblower previously approved berthing improvements to incorporate their new design changes brought about their acquisition of barges for their loading facilities that are larger than previously approved by BCDC and the Port. Given the balances, staff is confident that the needs of the development community, the Port and Hornblower can all be met within this time frame.

Ernestine Weiss urged the Commission to approve the project. Mr. Snellgrove participated in the Hyatt Hotel development and the Embarcadero and they are producing another jewel in the waterfront necklace. She recommended that the area should be lighted to attract people to the waterfront. She was not pleased with the lighting on the Embarcadero roadway. She asked that the existing yellow lights be replaced with high sodium white lighting. She encouraged the Commission to move forward with the project.

Pamela Duffy, law firm of Coblenz, Patch Duffy and Bass representing Hornblower Yachts, indicated that the issue before the Commission and their fundamental concerns are set forth in a letter delivered to the Commission yesterday. She was also fairly cognizant of the likely result of today's proceedings. Their primary concerns deal with the issues that the LDDA assumes. It has been fairly characterized to the Commission in the staff report. It assumes modifications of a major nature which they believe has the potential for severely and adversely affecting their operating abilities at Pier 3. In particular, they were concerned about the reserved no-build area referred to in the staff report i.e. 210 feet of use area that will no longer be available to them for the uses under their lease. They were also concerned about the proposed acquisition of 25 of their parking spaces for use by this

development proposal. They barely have adequate parking now and if 25 spaces were removed, the possibilities of doing any additional relocation of the Monte Carlo or the California which are clearly contemplated would be extremely difficult if not impossible. The construction access and interruption issues which they realize are part of developing an urban city with exciting opportunities but nonetheless they are being dealt with in a way that leads them to believe that they are the tail on this dog rather than a partner in improving the waterfront maritime opportunities. Mr. Dempsey is correct that there has been a comprehensive and extensive proposal made but it needs some work. They wanted to be clear that they are prepared to work very hard with the Port and with the developer of this project to achieve their shared goals. They cannot do it in a way that undermines their ability to maintain their maritime use, which is an important component of what the Port is trying to do in the waterfront. They would like to be poster child for success not the poster child for obstruction and they think they can achieve that. The goal that they all share is that there be an equitable allocation of the costs and burdens of rehabilitating the pier and the sheds but it can't be done at a disproportionate expense to the ability of Hornblower to operate its working, maritime use. This is a working maritime use, it requires the back of the house, it requires storage, it requires maintenance opportunities and it requires ample room to maneuver the vessels. They have significant concerns about the water taxi dock and excursion vessels and their ability to maneuver and their ability to maneuver so close to one another. It is a tight spot on the south side. They think those things can be resolved. It is not going to be the perfect world for everyone but as they read it now, it is a little disproportionate and they have to adjust that balance so that the maritime use continues unimpeded and its revenue for the Port can continue as well as this new concept. She asked the Commission to instruct Port staff the importance of working out the issues together. They all need a good charge to sit down, knock heads and get it done in the next 60-90 days.

Terry MacRae, President and Chief Executive Officer of Hornblower Yachts, indicated that they employ about 150 people in the Bay Area. They operate ten vessels on San Francisco bay. These vessels have a replacement cost of around \$44 million. Their investment is significant. They have been a tenant since 1984 in several locations at the Port; most are short term. They believe that they have sent over \$10 million to help the Port run its business since 1989. They support waterfront development. They support investment on the waterfront. They support waterfront preservation. They support renewal and repair of everything along the waterfront. This project is consistent with their goals in that respect. They are supportive of this project; however, they have some caveats. The term sheet that Port staff delivered to them last week is a starting point. While they have some discussions for the last four months and even before that with the pier development team, they asked for the list of all the things and they will put their list as well and sort them out. They want to put all the things together and deal with it. The term sheet proposed to them is not acceptable as written. They won't be able to repair the pier structure or provide a continuation of the revenue stream with this proposed term. They think that the project has significant investors and they think they should be able to build it without negatively impacting them in that fashion. They are supportive of this as the project represents their front door. The extension of their lease at Pier 33 is important because the timing of the improvement at the Ferry Building and the repairs at Pier 3 haven't gone the way everybody anticipated when the leases were first signed. That extension is a good thing for them as well as restructuring the improvements credits.

Those things work for them. On the other hand, the taking away of the visibility of their Pier ½ site that was part of the overall plan at Pier 3 and the reduction of parking available on their leasehold don't work for them. The removal of spaces that they need to support their operation doesn't work for them either. Asking them to operate their vessels in an unsafe manner in spaces where they don't have to is unacceptable. Visibility, parking, support and safety; that being said, they pledged to work with the Port decision makers to find the common ground necessary to retain their employees, continue the revenue stream and move the piers project forward in an appropriate way. They would like to be treated fairly in the process and they pledged to work with everybody involved to make sure it happens. He hoped that the Commission does the right thing,

Toby Levine, Northern Waterfront Advisory Group, indicated that the Port is very fortunate to have this project. It is an extremely good project. The original committee, which was the Ferry Building Advisory Group (FBAG), reviewed this project in depth and worked on the RFP. The FBAG and the Northeast Waterfront Advisory Group (NWAG) were merged. She was not involved with the earlier discussions that occurred with the Ferry Building Committee. The new joint committee reviewed and supports the project. The project meets all of the maritime requirements or possibilities that are allowed for Piers 1½, 3 and 5. Obviously, some difficulties have emerged. There is no doubt in her mind that the attorneys, developer, and Port staff involved with this project will be able to work this out with each side giving and getting a little bit. This is an exceptional project that everyone wants to see move forward.

Commissioner McWilliams asked about the permitted uses which include ceremonial berthing, temporary berthing and boat excursions but not dining excursions. Ms. Sobol replied that the uses allow for ceremonial berthing and excursions. The developer would have to present a proposal to the Commission if they want to run an excursion operation. However, the developer, as defined in their lease agreement, cannot request dining excursion. The size of the vessel and the amount of participation rent will be decided at the time the developer presents its proposal to the Commission. Commissioner McWilliams inquired about the status of ceremonial berthing. Ms. Sobol replied that is allowed under the Waterfront Land Use Plan and also allowed under the use clause of the lease. A boat dock management agreement will have to be negotiated between the Port's wharfingers and the developer to ensure that all of the uses at the pier and all the requirements for signage and safety are met.

Commissioner McCarthy indicated that the developer will receive rent credits for the costs incurred to repair and upgrade the substructure up to a maximum of \$10 million. She asked what would happen if the cost should exceed \$10 million and the developer is not able to secure the financing needed for the project. Ms. Sobol replied that the developer has to obtain all the financing before the close of escrow. The developer has to show the Port that they have the financing in place. For the last two years, SFWP has been working with their structural engineers and they have visited the site and have very good idea on what the costs will be. There is a cushion in the \$10 million amount. The developer feels comfortable as do staff. If they were to exceed that amount, it is at the developer's risk. SFWP and its lender, CalSTRS, will be providing a completion guarantee.

Commissioner McCarthy asked about the schedule of the project. Ms. Sobol replied that it

will take a couple of months to get the lease approved by the Board of Supervisors. SFWP still have to get some regulatory approvals but they hope to close escrow by July 1st. Until they have worked out the negotiations with Hornblower, the term sheet and the other conditions in the LDDA, they will not close escrow. In order for the developer to proceed with their financing, they need the LDDA approved today. The issues with Hornblower can and will be worked out.

Commissioner McCarthy remarked that this is a fabulous project and she hopes that staff and the appropriate parties will be able to work out the remaining issues. She suggested that staff should come before the Commission if the negotiations are at a stand still. Ms. Sobol indicated that if the Commission approves the LDDA, everyone will be motivated to get the agreement with Hornblower, work on their term sheet and lease amendment. Staff will present and seek Commission's approval of Hornblower's lease amendments.

Commissioner Brandon inquired as to when staff anticipates to present this item back to the Commission. Ms. Sobol replied that staff will be coming back to the Commission before the close of escrow, at which time the Hornblower lease amendment will also be presented. Any amendments that are required as part of the term sheet that staff is negotiating with SFWP and Hornblower require certain amendments with the Hornblower leases. It is a condition precedent to the close of escrow. Staff will be able to address the issue that Hornblower raised or staff will be able to make minor modifications in their lease. For example, with regard to the restricted use area, the Port is not restricting Hornblower's use in the area. The Port is simply stating that they cannot build a permanent structure in the area but they can still continue to put their parking, their containers, their bollards etc. It is not a restriction in their lease. They can still develop an office building if they choose but it will have to be done at the end of pier. There are a lot of issues that with Nic Dempsey's assistance, Hornblower and all parties will be able to resolve.

In response to Commissioner Brandon's inquiry about the impact to the project schedule if approval of this item is deferred for a couple of weeks, Ms. Sobol replied that deferring approval of this item for a couple of weeks will not accomplish anything. The pressure is on for this development project to move forward. Approval of this item will accomplish the goal of getting everything resolved.

Commissioner Brandon mentioned that she was not comfortable of approving the project and leaving it up to everyone to work it out when the issues have not been worked out over the last two years.

Ms. Sobol replied that going forward with the LDDA today would encourage a resolution of all the issues with Hornblower.

Mr. Dempsey indicated that to be fair with the development, staff is looking at the following issues: (1) Hornblower's perception of the development right on Pier ½, which may or may not have been anticipated in the original lease. (2) Hornblower's legitimate concern relative to access to the facility during construction which can only be worked out when the contractors are in place. Staff can only specify in the lease to provide reasonable and convenient access to the tenant. Staff cannot specify in the lease how the access will

be provided until the construction plans and specifications are approved. The Port has an obligation to its tenant to provide equitable access to the facility. (3) The perception, as yet unsupported, that no one can operate both sides of the facility if a dock exists on the other side.

Mr. Dempsey indicated that since this process started, the developer has asked for several changes. At the same time, Hornblower has asked for changes that did not relate to the development but rather to its operational needs. Specifically, Hornblower requested changes in their berthing plans, changes in the way they were going to do business on the pier, changes on their repair plan that have nothing to do with this lease. Those are issues that staff will resolve as part of its overall negotiations with Hornblower for Pier ½, Pier 3, Pier 31, Pier 31½, and Pier 33. The overall concept of Hornblower's business plan has to come together. It should not be incumbent upon Port's development staff or upon the developer that all of Hornblower's operational plans for the future involving other locations have to be in one bed first before this project moves forward. Staff will have a better opportunity to bring this all into conclusion if the Commission approves the project.

Commissioner McCarthy remarked that if the Commission approved this project today, the developer will be able to secure the financing necessary but if the issues are not resolved by the close of escrow, the project will collapse. Ms. Sobol indicated that there are certain things the developer needs and will make that decision. If certain amendments are not met, the developer would not be required to close escrow. The Port is also offering Hornblower certain benefits.

Commissioner McCarthy indicated that if the Commission approves the resolution, it might not be fair to Hornblower since there are a lot of issues that still needs to be worked out and it might jeopardize their operation. Ms. Sobol replied that the Commission's decision today will allow the developer to move forward and obtain financing from CalSTRS and their investors. The negotiations still have to be worked out with Hornblower because it is a condition to close the escrow. Staff will meet and address Hornblower's concerns and obtain their agreement to amend their leases. Delaying approval of this item will not help the developer proceed with the project. Approval of the LDDA will give staff the opportunity to meet with Hornblower and negotiate their leases before closing escrow.

Commissioner Hardeman indicated that Ms. Duffy and Mr. MacRae are not asking the Commission to reject the proposal. Ms. Duffy reiterated her earlier comment that they are not asking the Commission to reject the proposal but to delay the Commission's approval of the proposal until the substantive issues, which affect its viability, and their viability can be resolved.

Commissioner McWilliams indicated that the bargaining position of the parties on the financing issue will have to go forward and the Commission will still have an opportunity to discuss the outcome of the negotiations. Approval of the LDDA will facilitate the developer's ability to complete the project. If there are issues or obstacles related to ultimately achieving the project through these negotiations, the Commission would be able to deal with it at a later date. Ms. Sobol stated that Hornblower is not in any worse position if this agreement is approved today because staff still has to meet with them and

get their agreement. Staff will not be able to close escrow if that condition is not met. Their lease amendments will come back to the Commission for review and approval.

Commissioner Brandon stated that the Commission would like to see this particular project come back to the Commission again with the negotiated deal. Ms. Sobol replied that this project and Hornblower's lease are inexplicably involved because the lease amendments are conditioned to the close of escrow. When staff presents Hornblower's lease amendments at a later date, staff would be able to give the Commission an update on this particular project.

Commissioner Brandon stated that the Commission would like to have some control over the project. Hornblower's leases will have to be negotiated and presented to the Commission for approval but once this particular project is approved, it would be up to the Executive Director to make the decision. The Commission would like staff to present this project to the Commission before the close of escrow.

Mr. Byron Rhett, Director of Planning and Development, indicated that if the Commission approves this project, it would allow all parties to move in parallel tracks. Staff would be able to work with the developer so they can put their CalSTRS financing in place. The Commission's approval today will send that message to CalSTRS that the Port is committed to this project. At the same time, staff would be able to continue its negotiations with Hornblower. Staff can come back to the Commission prior to the close of escrow even separate from the Hornblower amendments. Staff would be able to present the project to the Commission and give an update on the issues resolved or any outstanding issues. Approval of the LDDA will allow all parties to move ahead. This item will be calendared for the Board of Supervisors' consideration. Staff anticipates that it would take more than two weeks to resolve Hornblower's issues and delaying it to the next meeting would not necessarily address the problem. Staff is willing to work with Hornblower, resolve their issues, bring them back to the Commission at the same time work with the developer and move the project forward.

Commissioner Hardeman suggested that this item should be brought back to the Commission on the regular calendar to give the public an opportunity to comment.

Commissioner McWilliams asked if Hornblower has the ability to prevent this project from going forth if there are no agreed lease amendments and things stay status quo. Mr. Rhett replied that technically Hornblower can prevent this project from moving forward but realistically, these buildings have to be rehabilitated and protect their investment because neither the Port nor Hornblower are in a position to make multi-million dollar improvements to Pier 3. It will happen through this development. It's to our advantages to have this development move forward. This is also part of the motivation to have all parties reach agreement and have this development go forward because it will preserve their development as well as preserve those buildings.

Commissioner Brandon asked if this project will be presented to the Commission before it goes to the Board of Supervisors for approval. Mr. Rhett replied that it would take approximately a month or two before this item goes to the Board. Staff will bring this item to the Commission when the issues are resolved.

Commissioner McCarthy stated that if the issues are not resolved and this item goes to the Board, it would be a problem.

Commissioner Brandon asked the Legal Counsel if the Commission could change one of the resolved clause to state that this item has to come back to the Commission for review and approval and not just authorize the Executive Director to enter into negotiations.

Noreen Ambrose replied that the Commission can change the resolved clause. She reiterated that the Commission is going to approve the LDDA and the lease but the Commission would like to add a resolved clause that the proposed resolution of the issues between this lease and Hornblower's is brought back to the Commission for their review and action by a certain date. Commissioner Brandon made the motion; Commissioner McCarthy seconded the motion.

Mr. Snellgrove indicated that they spent 2 ½ years on this project. One of the teams that competed against them was Hornblower. Hornblower has issues with the Port. They talked to Hornblower a couple of years ago and consistently found that there were agreements reached verbally which were later refuted. For instance, in a letter dated March 14, 2002, Hornblower offered to lease them the 25 parking spaces which they suddenly, yesterday, wrote in a letter that the Port is taking away the spaces. He does not understand the magnitude of the Hornblower issues are with the Port. They have spent \$3 million on fees and considerable amount of time and they have been led to believe that they are accommodating all of Hornblower's request. They are paying all the improvements to the bulkheads to give them additional exiting for their boats. They moved the public pier twice and shortened it for them. They were told verbally that Hornblower had agreed to all these accommodations. They have signed an LDDA and the LDDA contains a term sheet which outlines the terms that Port staff believes they would be able to reach agreement with Hornblower. During the two years, the real estate market has gone way down. The cost of this project has gone up from \$36 million to \$44 million. They have a moment in time where they have an investment partner who is ready to guarantee the completion of this work. They have delayed this LDDA and continued to work with Hornblower for the last two years. He claims that Hornblower is using this project to negotiate better terms for their other marine operations. If this item is delayed, it may well come off the table.

Commissioner Brandon stated that everybody wants this project to be successful. She does not want to negotiate Hornblower's total lease but only the portion that has to do with this project. The Commission would like to see a successful completed project.

Commissioner Hardeman indicated that this amendment does nothing to what the Commission will ultimately vote on. The amendment to the resolution will encourage staff to bring this item to the Commission for further review and approval. A tenant who has eight leases with the Port is a valuable tenant. He believes that the negotiation process will move forward. It will be a little competitive in the beginning but he hopes that all the parties involved will come to an agreement. Port staff is confident that all parties will be in agreement.

ACTION: Commissioner McCarthy moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor. Resolution No. 03-17 was adopted.

6. NEW BUSINESS/PUBLIC COMMENT

Commissioner McWilliams requested the Executive Director to provide the following report at the next Commission meeting: the particulars of existing Port policy related to management of incidents involving Port employees where allegations of wrongdoing or actions potentially affecting public safety are established. If there is no policy in place, he asked that staff make appropriate recommendations to the Commission for policy consideration.

7. EXECUTIVE SESSION

- A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Brandon moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor.

At 5:35 p.m., the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER (Discussion Item)

- a. Discuss existing litigation matter pursuant to Sections (a) and (d) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case). (Discussion Item & Action Item).
- Employers Insurance of Wausau v. LTM Construction Co. Inc., Keith V. Lennon, Cecile Lennon, City and County of San Francisco; San Francisco Superior Court Case No. 412640, filed September 17, 2002.

Discussion and approval of settlement of litigation seeking foreclosure of stop notice and declaratory relief, relating to the Port construction contract No. 2665, Pier 48 Interior Fire Damage Repair. Proposed settlement of litigation upon terms which include Port's payment of \$52,703 in contract retention funds to plaintiff-surety, in exchange for dismissal and full release of litigation, and plaintiff's agreement to indemnify the Port/City from all claims of the prime contractor, subcontractors, and the Internal Revenue Service, to the extent of such payment. (Resolution No. 03-18.)

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

*This session is closed to any non-City/Port representative. **

- a. Property: Pier 28- ½

Person Negotiating: Port: Ken Winters, Director of Real Estate
*Prospective Bidder(s)

- b. Property: Pier 29- ½
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Fascination Consumers Enterprises, Ltd.: Sam Conti
- c. Property: Bryant Street Pier
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*San Francisco Cruise Terminal LLC: Glen Elkington
- d. Property: Piers 19/23
Person Negotiating: Port: Douglas F. Wong, Executive Director
*Big C Traders: Raymond Lynch
- e. Property: Pier 70
Person Negotiating: Port: Peter Dailey, Maritime Director
*San Francisco Drydock: Joe O'Rourke, President
- f. Property: Pier 80
Person Negotiating: Port: Peter Dailey, Maritime Director
*Marine Terminals Corporation: James Wiltshire

8. RECONVENE IN OPEN SESSION

At 7:15 p.m., the Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner Brandon moved approval to adjourn executive session and reconvene in open session; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Brandon moved approval to approve proposed settlement of litigation entitled Employers Insurance of Wausau v. LTM Construction Co. Inc., Keith V. Lennon, Cecile Lennon, City and County of San Francisco; San Francisco Superior Court Case No. 412640, filed September 17, 2002 upon terms which include Port's payment of \$52,703 in contract retention funds to plaintiff-surety, in exchange for dismissal and full release of litigation, and plaintiff's agreement to indemnify the Port/City from all claims of the prime contractor, subcontractors, and the Internal Revenue Service, to the extent of such payment. Commissioner McCarthy seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Brandon moved approval to not disclose any other information discussed in executive session; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor.

9. ADJOURNMENT

ACTION: Commissioner Brandon moved approval to adjourn the meeting; Commissioner

McWilliams seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 7:17 p.m.

SAN FRANCISCO PORT COMMISSION

DOCUMENTS DEPT.

MAR 21 2003

REGULAR MEETING

4:00 P.M., TUESDAY, MARCH 25, 2003

BAYSIDE CONFERENCE ROOM

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The Port Commission Agenda as well as Staff Reports/Explanatory Documents available to the public and provided to the Commission are posted on the Port's Website at www.sfport.com.

AGENDA

1. ROLL CALL
2. APPROVAL OF MINUTES - March 11, 2003 Regular Meeting
3. EXECUTIVE
 - A. Executive Director's Report
4. CONSENT
 - A. Request for approval for the installation of two trees, which are part of a Public Art Project for Warm Water Cove Park. (Resolution No. 03-20)
5. REAL ESTATE
 - A. Authorization to approve the Exclusive Right to Negotiate for the Pier 28-½ Restaurant Opportunity. (Resolution No. 03-21)
6. ENGINEERING & MAINTENANCE
 - A. Request for approval to advertise for Competitive Bids for the 2003-2005 Maintenance Dredging Construction Contract. (Resolution No. 03-22)
 - B. Request for Authorization to Award Construction Contract No. 2679 "Downtown Ferry Terminal Public Pier" to Dutra Construction Inc. (Resolution No. 03-23)
7. MARITIME
 - A. Request for approval of the amendment to Port Commission Resolution 03-11 , Emergency Contract with Titan Maritime, LLC, from original amount of \$1,172,000 to the revised amount of \$1,213,098. (Resolution No. 03-24)
 - B. Request for authorization of Executive Director, or his designee, to negotiate and enter into the proposed Fourth Amendment to Lease with San Francisco Drydock, Inc. at Pier 70. (Resolution No. 03- 25)

8. PLANNING & DEVELOPMENT

- A. Request for authorization to negotiate an Exclusive Right to Negotiate Agreement with the International Museum of Women for the development and long-term lease of Pier 26 located on The Embarcadero between Harrison & Bryant Streets. (Resolution No. 03-26).
- B. (1) Request for adoption of findings, including a statement of overriding considerations and adoption of a mitigation and monitoring program, pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines in connection with the proposed Mixed-use Cruise Terminal Project located on Piers 30-32, the sale of property located on a portion of Seawall Lot 330 at the corner of Bryant and Beale Streets for a condominium project, and a public open space project referred to as the Brannan Street Wharf in the location of Piers 34 and 36 (Resolution No.03-27).

(2) Request for approval of the following documents and actions in connection with the development of a Mixed-Use Cruise Terminal Project located on Piers 30-32, the sale of property located on a portion of Seawall Lot 330 for development of a condominium project, and development of a public open space project referred to as the Brannan Street Wharf in the location of Piers 34 and 36 (Resolution No. 03-28):
 - (a) Approval of a Lease Disposition and Development Agreement governing disposition and development of the Mixed-Use Cruise Terminal Project at Piers 30-32, and development of the Brannan Street Wharf;
 - (b) Approval of a Lease with San Francisco Cruise Terminal, LLC for a 66-year lease of Piers 30-32 for use as a Mixed-Use Cruise Terminal Project;
 - (c) Approval of a Purchase and Sale Agreement governing the sale to San Francisco Cruise Terminal, LLC of approximately 22,000 square feet of property located at the corner of Beale and Bryant Streets on Seawall Lot 330;
 - (d) Adopting findings authorizing the lifting of the public trust from approximately 22,000 square feet of property located at the corner of Beale and Bryant Streets on Seawall Lot 330, subject to approval by the State Lands Commission;
 - (e) Declaration of Policy regarding timing of construction of Brannan Street Wharf; and
 - (f) Declaration of Policy regarding future development of the remainder of Seawall Lot 330.

NOTE: The San Francisco Cruise Terminal Mixed-Use Project and Brannan Street Wharf Project, as further described in the action items (Nos. [8B (1) & (2)] listed above is within the scope of the program analyzed in the Waterfront Land Use Plan Program Final Environmental Impact Report certified on January 9, 1997, and the program and projects analyzed in the San Francisco Cruise Terminal Mixed-Use Project and Brannan Street Wharf Project FSEIR certified by the Planning Commission on November 21, 2002 (State Clearinghouse No. 1994123007).

9. NEW BUSINESS/PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period.

It is strongly recommended that public comments be submitted in writing so they can be distributed to the Commissioners for their review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

10. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS (Discussion and Action Items)

a. Discuss existing litigation matter pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):

- F. Alioto Company, Inc. et al. v. City & County of San Francisco, et al., S. F. Superior Court Case No. 318360, filed January 25, 2001.

b. Discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (1 case as defendant).

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

*This session is closed to any non-City/Port representative. **

a. Property: Pier 27-31

Person Negotiating: Port: Byron Rhett, Planning & Development Director

*The Mills Corporation: Steven J. Jacobsen

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 27-31.

b. Property: Pier 80

Person Negotiating: Port: Peter Dailey, Maritime Director

*Marine Terminals Corporation: James Wiltshire

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 80.

c. Property: Piers 19/23

Person Negotiating: Port: Douglas F. Wong, Executive Director

*Big C Traders: Raymond Lynch

Under Negotiation: ☐ Price ☐ Terms of Payment ☒ Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Piers 19/23.

- d. Property: Seawall Lot 330
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Prospective Bidder(s)

Under Negotiation: ___ Price ___ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding the bids received for the Seawall Lot 330 parking operation.

- e. Property: Seawall Lot 352
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Specialty Crushing: Tom Chasm

Under Negotiation: ___ Price ___ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Seawall Lot 352.

- f. Property: Pier 3
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Hornblower Yachts: Terry MacRae

Under Negotiation: ___ Price ___ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 3.

- g. Property: Seawall Lot 324 (Broadway & Drumm)
Person Negotiating: Port: Ken Winters, Director of Real Estate
*San Francisco Parking Company: Tim Leonoudakis

Under Negotiation: ___ Price ___ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Seawall Lot 324.

11. RECONVENE IN OPEN SESSION

- A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12
- B. Vote in open session on whether to disclose any or executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

12. ADJOURNMENT

MARCH/APRIL 2003
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
March 25	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
April 8 (<i>Cancelled</i>)	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1
April 22	4:00 p.m.	Port Commission	Bayside Conference Room @ Pier 1

NOTES:

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 4:00 p.m., unless otherwise noticed, in the Bayside Conference Room @ Pier 1. Contact Amy Quesada at 274-0406. *The Commission Agenda and staff reports are also posted on the Port's Website @ www.sfport.com.*

The Environmental Quality Advisory Committee (EQAC) meets regularly on the fourth Thursday of the month at 9:00 a.m. at Scoma's Restaurant, Pier 47 @ Fisherman's Wharf. Contact Jay Ach @ 274-0562.

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Kirk Bennett @ 274-0545.

The Maritime Commerce Advisory Committee (MCAC) meets on a bi-monthly basis, on the third Thursday of the month, from 11:30 a.m. to 1:30 p.m. @ Pier 1. Contact Jill Rodby @ 274-0519.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:30 to 7:30 p.m. at the Mission Bay Visitor Center (255 Channel Street). Please contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 – 8th Street between Irvin and Hooper. Contact Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Please contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at www.sfport.com.

ACCESSIBLE MEETING INFORMATION

Getting to Pier 1:

Pier 1 on the Embarcadero, at the foot of Washington St. The Embarcadero Station is the closest BART and MUNI Metro stop, located below Market St. at Drumm & Spear Streets. The nearest F-Line streetcar stop is on the Embarcadero at Washington St. MUNI bus lines serving the Pier 1 area are the 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:

- A) 1 space in the surface lot on the west side of the Embarcadero at Washington St.
- B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
- C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking.

Metered street parking is available on the Embarcadero, Washington St. and Drumm St.

Pier 1:

The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Commission Bayside meeting room. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Commission meeting room.

Accessible meeting information policy:

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact Nita Mizushima, Chief Harbor Engineer, at 274-0559. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, please contact Donna Hall, Administrator at 554-7724; fax 554-5163; e-mail address Donna_Hall@ci.sf.ca.us; City Hall, Room 244, One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Ordinance Task Force, the San Francisco Public Library and on the City's Website at www.ci.sf.ca.us/bdsupvrs/sunshine.

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.



MEMORANDUM

March 18, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Request Approval for the installation of two trees, which are part of a Public Art Project in Warm Water Cove Park

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION

BACKGROUND

Port Staff was approached by "Pond", a non profit educational institution seeking a location for the installation of a pair of "paradox" trees known as the "One Tree(s)" a City-Wide Tree Planting and Public Art Project. Port Staff, working with Pond identified, Warm Water Cove Park, located at the terminus of 24th Street, as an appropriate location for the project.

In its initial phase, Pond will coordinate the plantings of 100 pairs of genetically identical trees in public places throughout San Francisco's diverse microclimates, including North Beach, the Castro and South of Market. As the *OneTree(s)* are biologically identical, in the subsequent years they will reflect the social and environmental differences to which they are exposed. Each of the trees can be compared by viewers in the public places they are planted, to become a demonstration, a long, quiet and persisting spectacle of the Bay Area's diverse environment. Essentially, *OneTree(s)* functions as a dynamic instrument that maps the microclimates of the Bay Area. In May of 2003, documentation of the planting sites and related interpretive material will be showcased in a gallery exhibition curated by Pond.

Port staff proposes to enter into a License agreement with Pond for Pond to install and maintain two trees as part of the One Tree(s) project at Warm Water Cove Park. Pond will install the trees and maintain them at no cost to the Port. Pond has agreed to the terms of the Port's standard license agreement, including those with respect to insurance and indemnification.

If approved, the trees will be planted on March 29, 2003.

Prepared By: David Beaupre, Planning & Development

This Print Covers Calendar Item No. 4A

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 03-20

WHEREAS, The San Francisco Port Commission has the exclusive authority under Charter Section 3.581 to use, conduct, operate, maintain, manage, regulate and control the property within Port jurisdiction, including the power to approve license agreements for the use of this property; and

WHEREAS, "Pond", a non-profit educational institution, has proposed the installation and maintenance of two trees as a part of the One Trees Project within Warm Water Cove Park; and

WHEREAS, Pond will enter into a license agreement with the Port allowing Pond to install and maintain the trees; and

WHEREAS, The Port will not be liable for any damage caused to the trees and will not be liable for any injury caused by the trees either during installation or on going maintenance or monitoring; and

WHEREAS, The Port will be permitted at its own discretion to remove the trees if at any time it wishes to do so; NOW THEREFORE, BE IT

RESOLVED, The Port Commission authorizes the Executive Director to enter into license agreement with Pond on the terms and conditions stated above, in a form approved by the City Attorney.

I hereby certify that the San Francisco Port Commission at its meeting of March 25, 2003 adopted the foregoing resolution.

Secretary



MEMORANDUM

March 18, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Permission to Advertise for Competitive Bids for 2003-2005 Maintenance Dredging Construction Contract

DIRECTOR'S RECOMMENDATION: TO AUTHORIZE STAFF TO ADVERTISE FOR COMPETITIVE BIDS FOR THE 2003-2005 MAINTENANCE DREDGING CONSTRUCTION CONTRACT

Introduction

Port staff requests that the Commission authorize the advertisement for competitive bids for construction contract No. 2686, Maintenance Dredging Project. The project provides for dredging at sites on the San Francisco waterfront from 2003 to 2005.

Background

The Port will require maintenance dredging at several Port facilities from 2003 to 2005. The sites in need of dredging include Pier 35, Pier 80, Pier 92, Islais Creek, Central Basin, Fisherman's Wharf, Pier 94/96 and others on the San Francisco waterfront. The contract will incorporate the dredge disposal requirements noted in the "Long Term Management Strategy for the San Francisco Bay" developed by the Dredging Material Management Office, including provision for ocean disposal and for up-land disposal of dredge materials. The contract scope includes contractor mobilization and demobilization, surveying, dredging, and dredge material transportation and disposal, as set forth in the construction contract documents.

This Print Covers Calendar Item No. 6A

The engineer's estimate for this project is \$6,300,000. The project cost will be funded with Port capital funds for maintenance dredging. Staff intends to request bidding on a unit price basis and shall determine the low bidder based on 676,000 cubic yards of dredge material. Due to limited appropriated funds at the time of award, the Port staff intends to award the contract based upon the initial quantity of 156,000 cubic yards. After additional funding becomes available, the contract will be modified to fund the full amount of the necessary work.

Summary

Port staff recommends that the Commission authorize the advertisement for competitive bids for construction contract No. 2686, Maintenance Dredging Project. This will enable staff to maintain maritime business.

Prepared by: Ken Chu, Project Engineer, for
Nieret Mizushima, Chief Harbor Engineer

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 03-22

- WHEREAS, the Port will require maintenance dredging at several Port facilities from 2003 to 2005; and
- WHEREAS, the sites in need of dredging include Pier 35, Pier 80, Pier 92, Islais Creek, Central Basin, Fisherman's Wharf, Pier 94/96 and others on the San Francisco waterfront; and
- WHEREAS, the contract will incorporate the dredge disposal requirements noted in the "Long Term Management Strategy for the San Francisco Bay" developed by the Dredging Material Management Office, including provision for ocean disposal and for up-land disposal of dredge materials; and
- WHEREAS, the contract scope includes contractor mobilization and demobilization, surveying, dredging, and dredge material transportation and disposal, as set forth in the construction contract documents; and
- WHEREAS, the engineer's estimate for this project is \$6,300,000; and
- WHEREAS, the project cost will be funded with Port capital funds for maintenance dredging; and,
- WHEREAS, staff intends to request bidding on a unit price basis and shall determine the low bidder based on 676,000 cubic yards of dredge material; and,
- WHEREAS, due to limited appropriated funds at the time of award, Port staff intends to award the contract based upon the initial quantity of 156,000 cubic yards; and,
- WHEREAS, after additional funding becomes available, the contract will be modified to fund the full amount of the necessary work; now therefore be it
- RESOLVED, that the San Francisco Port Commission hereby authorizes Port Staff to advertise for competitive bids for the Maintenance Dredging, Contract 2686.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 25, 2003.

Secretary



MEMORANDUM

March 20, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams

FROM: Douglas F. Wong 
Executive Director

SUBJECT: Authorization to Enter into an exclusive Right to Negotiate for the Renovation and Operation of the Restaurant Opportunity at Pier 28½

DIRECTOR'S RECOMMENDATION: APPROVE EXCLUSIVE RIGHT TO NEGOTIATE WITH JOHN CAIN, AKA TEAMWORK

Background

On August 27, 2002, the Port issued a Request for Proposals ("RFP") for the Restaurant Development Opportunity at Pier 28½. In this RFP, the Port solicited proposals from qualified Respondents ("Respondents") for the rehabilitation of a restaurant (the "Site") located at Pier 28½.

The Port stated in the RFP that it would select a qualified Respondent that has the demonstrated ability to finance, design, construct, and operate a restaurant on the Site, with the goal of negotiating a lease and related documents for the development and lease of the Site. The RFP further stated that the Commission intends to select a Respondent that can successfully create a restaurant that provides the surrounding neighborhood and businesses with an affordable, high quality dining choice and activate and enliven the neighborhood.

The RFP stated that the selected Respondent must have extensive experience in the financing, development and operation of restaurants, and preferably should possess experience with the start-up of new restaurant operations.

THIS PRINT COVERS CALENDAR ITEM NO. 5A

STAFF ANALYSIS OF RESPONSES

Three Respondents, 1. Team Works, John Cain, 2. Crab Shack, Barbara Tice, 3. Boon, Boonsathien, Reilly, Stroud, submitted responses to this RFP. Port staff has reviewed these three submittals with input from a representative of HRC. Staff analyzed the Respondent's proposals against the criteria in the RFP and concluded the following. See Exhibit A for a summary of the responses.

A. Experience and Organization of the Respondent's Team

While teams include members that are experienced in the development and operation of restaurants, the John Cain, AKA Teamwork (hereinafter "Teamwork") team appears superior because their experience is more focused on restaurant operations and they have a proven track record of successfully completing projects.

B. Experience of Restaurant Operator

All three proposed restaurant operators appear to have adequate culinary experience. They all have enjoyed positive reviews and press for past accomplishments. Staff believes that the Teamwork proposal is superior in that the key member of the team responsible for the restaurant operations has more hands-on experience operating a small restaurant establishment.

C. Restaurant Concept

All three restaurant concepts are interesting. The Teamwork proposal of a comfort food establishment was deemed a better fit for the neighborhood.

D. Design Consultants

The panel felt that while three Respondents were capable of designing a superior facility, the design edge was given to Teamwork because of more extensive restaurant experience.

E. Financial Capacity and Plan

The review felt that Teamwork proposal was an excellent idea and that Teamwork financial projections were less speculative due to Teamwork outstanding local reputation and success as a restaurant operator.

F. Economic Return to the Port.

The panel noted that Teamwork projected revenue stream was more realistic and therefore a more dependable source of revenue.

G. Financial Viability.

The panel noted that all three proposals include optimistic sales projections which, if met, would justify their respective levels of investment and ensure a decent return to the Port. Teamwork's proposal does offer the highest minimum economic return to the Port with a monthly base rent of \$3,894.00.00 versus 6% percent with a first year projected sales estimated at \$768,717.00

H. Selection Ranking

The selection criteria detailed in A through F was rated by a panel of Four Port staff persons using following scoring range: 1+barely meets RFP; 2=meets or slightly exceeds RFP criteria; 3=strongly exceeds RFP criteria; a bonus point of 1 could be awarded for an answer that greatly exceeds the RFP.

Following the scoring of the RFP the three respondents were interviewed using identical questions and scoring criteria: Score 1 answer satisfactory; Score 2 answer exceeds expectations; Score 3 Answer strongly exceeds expectations. A bonus score of 1 could be award for an outstanding answer. The results of are detailed below:

Written Response & Interview Scores for Pier 28.5 Restaurant Development RFP

PANELISTS	JB		PD		BR		KW		TOTAL	TOTAL	GRAND TOTAL	RANKING
COMPANY	Written	Interview	Written	Interview	Written	Interview	Written	Interview	Written	Interview		
TEAM WORK, HN CAIN	25	16	22	17	20	15	23	15	90	63	153	1
LAB SHACK, ARBARA CE	22	17	20	16	18	18	21	13	81	64	145	2
MONSATHIE REILLY, ROUD	14	13	13	10	13	9	13	10	53	42	95	3

I. Diversity Program & Other Factors.

All teams appear sensitive to diversity issues and exhibit a willingness to work further with the Port on this issue. Teamwork proposal was determined to have greater community support, was deemed a better fit for the neighborhood and overall was determined a better match to the requirements of the RFP. Based on these factors and Teamwork success as a local restaurateur, Teamwork would have a better chance of success.

EXCLUSIVE NEGOTIATIONS

As provided in the RFP, after evaluation and determination of the most qualified Respondents, Port staff may recommend that the Port Commission authorize staff to enter into exclusive negotiations with a single Respondent. The Exclusive Right to Negotiate, a similar form of which was included in the RFP, is attached hereto as Exhibit B. Upon Port Commission authorization of exclusive negotiations, the selected Respondent must submit a \$5,000.00 non-refundable fee (inclusive of the Earnest Money Deposit already provided by the Respondent) for a three-month period of exclusive negotiations during which:

- A lease agreement and related documents for the lease and renovation of the Site in a final form approved by the San Francisco City Attorney will be negotiated, incorporating specific terms including, but not limited to, the Port's and lessee's responsibilities, the economic parameters, development standards and requirements, and a performance schedule;
- the selected Respondent will complete its "due diligence" review of the Site, finalize financial projects, and complete preliminary development plans including, but not limited to floor plans, elevations, and renderings for the Site;
- the selected Respondent, with the Port's assistance, will complete the project approval processes and any required supplemental environmental review.

The period of exclusive negotiations may be extended solely at the Port's option. The non-refundable fee for extending the period for exclusive negotiations will be \$1,000.00 per month payable in advance.

It is important to note that your action today constitutes authorization to negotiate for a lease agreement on terms acceptably to both Port and the Respondent. It does not constitute an acceptant of the terms of Teamwork's proposal, and Port staff will negotiate to obtain the best overall deal for the Port consistent with the project objection.

STAFF RECOMMENDATION

Based on staff's analysis of the three proposals submitted for the Restaurant site, staff recommends that the Port Commission authorize staff to enter into exclusive negotiations with John Cain, AKA Teamwork for the renovation of a restaurant at Pier 28½. Port staff anticipates reaching a mutually satisfactory resolution to any outstanding issues during the exclusive negotiation period.

Prepared by: Jeffrey A. Bauer, Senior Commercial Lease Manager

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 03-21

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, under Charter Section 3.581(g), leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and
- WHEREAS, on August 27, 2002, the Port issued a Request for Proposals for the Restaurant Development Opportunity at Pier 28½; and
- WHEREAS, Teamwork submitted responses to the RFP on November 7, 2002, which complied with the submittal requirements stated in the RFP and which have been reviewed and evaluated by Port staff, with input from a representative of the HRC; and
- WHEREAS, based on this review, Port staff has recommended that the Port Commission enter into exclusive negotiations with John Cain, AKA Teamwork; and
- WHEREAS, the Port Commission has reviewed the Port staff recommendation set forth in the Memorandum to Port Commissioners dated March 20, 2003 for Agenda Item 5A and based on the information and evaluation set forth therein has determined that John Cain, Teamwork best meets the qualification requirements for development of Pier 28½; now, therefore, be it
- RESOLVED, that this Commission hereby authorizes the Executive Director of the Port, or his designee, to execute an Exclusive Right to Negotiate agreement substantially in the form attached as Exhibit B and incorporating the economic parameters set forth in Exhibit 1 to the Exclusive Right to Negotiate outlined in the Memorandum of Agenda Item 5A for the March 20, 2003 Port Commission meeting, a copy of which is on file with the Port Commission Secretary, with the understanding that the final terms and conditions of the Lease and related documents negotiated between John Cain, AKA Teamwork and Port staff during the Exclusive Negotiation period and approved as to form by the San Francisco City Attorney will be subject to the approval of the Port Commission; and be it further
- RESOLVED, this authorization does not constitute on acceptant of the terms of Teamwork's proposal, but Port staff is directed to negotiate a lease

agreement and related documents on terms acceptably to Port and Teamwork that service maximum benefits to the Port consistent with the project objection; and be it further

RESOLVED, that the City Planning Department's Office of Environmental Review has determined that additional environmental review is not required for the project as identified in the RFP, and if, through exclusive negotiations, actions and activities are identified that would require additional environmental review, and if such additional environmental review identifies significant adverse impacts that have not been mitigated, the Port retains absolute discretion to: (1) modify the project to mitigate significant adverse environmental impacts, (2) select feasible alternatives which avoid significant adverse impacts of the proposed project, (3) reject the project as proposed if the economic and social benefits of the project do not outweigh otherwise unavoidable significant adverse impacts of the project, or (4) approve the proposed project upon a finding that the economic and social benefits of the project outweigh otherwise unavoidable significant adverse impacts of the project.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 25, 2003.

Secretary

EXHIBIT A
BOONDOCKS, PIER 28½

	Crab Shack	Thai Cuisine	Team Work
A. Experience & Organization	Partnership 60% Tice 40% Erik Boardman.	LLC 62% Boon Family, 20% Channarong Pumpteck 9% Steve Reilly 9% Malcolm Stroud	Corporation 25% John Caine 25% Patrick McCune 25% Joe Cassidy 25% Ken Wilson
B. Experience & Reputation	Tice -owns the Bell Tower Boardman -owns Amante	Boon- formerly owned Boon's , Vulcan Café, over 30 years experience as a chef at the Hyatt S.F. Reilly- formerly owned Java House Stroud- owns Scott's Seafood and Java House	Caine- owner/mgr. Café Mars, 8 years experience as a Bar Manager Mc Cune-silent partner Gin Joint
C. Quality and Uniqueness	Menu focus on, but not exclusively on, seafood. Will include bar no entertainment planned. Hours 11am-2am. Ambiance "seductive, yet relaxing and comfortable." Menu : Starters \$5-13 Entrees \$7- 9	"Reasonably priced Thai food, family type operation. Emphasizing friendly Thai-American Relations and history." No entertainment planned. Menu: Starters \$4-6 Entrees \$4-9	"Offering San Francisco-style fare. Including Burgers, crabmeat, Irish Coffees & local entertainment. Including jazz combos, happy hour & weekend brunch." Menu: Starters \$3-8 Entrees \$9-10
D. Design Consultants	Architecture TM, Za' Arour Interior Design, Economy Restaurant Kitchen Design. Combined experience includes restaurants such as: Thirsty Bear, Il Fornalo, California Culinary Academy	Architect: Hardin & Berman : Stinking Rose Red's Java House Landscape: Denise Dirickson: Landscape Mgr. Pier 39 Design: internal by members	Marian Ring Design: Ti Couz Creperie, Cava 555 Maureen Erickson Design Joe Cassidy Construction
E. Scope and Quality of Renovation	"Warmer, softer ambience, hardwood floors, solid wood bar, soft lighting and plush accommodations."	"Clean, light and open feeling" Replace windows for more light, replace floor, clean, repair, paint. Flowering vines added to outside of building.	Remove old paneling & clean up surfaces, paint w/ some "hip" washes. Remove walk-in refrigerator to increase useable space.
F. Financial Capacity & Plan	Funded via existing funds and the initial equity invested in restaurant.	Internal Capital	Personal accounts
G. Economic Return to Port	Monthly Base Rent: \$3750. (\$1.70 sq. ft.) Percentage 6.5%	Monthly Base Rent: \$2500. (\$1.12 sq. ft.) Percentage 7.5%	Monthly Base Rent: \$3,800. (\$1.75 sq. ft.) Percentage 6%
H. Financial Viability	Capital Investment \$100k	Capital investment \$30K	Capital investment \$60K
Gross Sales	\$47, 450 - \$58,130(see profit & loss attachment)	\$33,333 - \$44, 444	\$64,059
Operating Expenses	\$25, 178	\$38,123	\$25,000

EXHIBIT B
EXCLUSIVE RIGHT TO NEGOTIATE

THIS EXCLUSIVE RIGHT TO NEGOTIATE ("Exclusive Right") is entered into as of this [], by and between the **City and County of San Francisco** ("City"), acting by and through its **Port Commission** ("Port"), and John Cain, AKA Teamwork (referred to hereinafter as "Teamwork") upon the following facts, intentions and understandings of the parties:

A. Teamwork desires to obtain an exclusive right to negotiate a lease for the operation of a restaurant located at Pier 28½ in the City and County of San Francisco (the "Site"), under the general terms and conditions agreed upon by Port and Teamwork herein and subject to all required permits and regulatory approvals being obtained by Teamwork.

B. The parties now desire to enter into this Exclusive Right to Negotiate to set forth the terms and conditions upon which Port and Teamwork will enter into lease negotiations and seek to complete written lease documents for Port Commission approval.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Term.** The term of this Exclusive Right shall commence on [] ("Commencement Date"), and shall expire on [] unless extended in accordance with Section 2 below ("Expiration Date"). The term of this Exclusive Right, including any extensions, is hereinafter referred to as the "Exclusive Negotiation Period." During the Exclusive Negotiation Period, the Port will not solicit or consider any other proposals or negotiate with any other developer with respect to the development of the Site.

a. **Negotiating Fee Amount.** Upon execution of this Exclusive Right, Teamwork shall deliver to Port the sum of [] Dollars (\$) as a fee for the right to negotiate with the Port during the Exclusive Negotiation Period ("Negotiating Fee"). Except as otherwise provided herein, the Negotiating Fee shall be non-refundable and shall be applied to the Security Deposit and Base Rent obligations of Teamwork under the terms of any lease agreement entered into by Port and Teamwork and affecting the Site. In the event that Teamwork is unable to secure all of the permits and regulatory approvals necessary to operate a restaurant at the site, despite Teamwork diligently initiated and pursued good faith efforts to do so, the Negotiating Fee shall be retained by the Port on the Expiration Date.

b. **Security Instrument.** In lieu of depositing the Negotiating Fee to Port in cash as provided in Section 1.a. above, Teamwork may deliver to Port a security instrument such as a letter of credit or certificate of deposit; (a "Security Instrument") provided however, that said security instrument shall be (a) in a form and issued by a surety company or financial institution acceptable to Port in Port's sole discretion, (b) made payable only to Port and able to be liquidated without any action required by Cliff's, and (c) in a sum equal to the amount specified in Section 1.a. and adequately cover penalty charges and/or administrative fees imposed for early liquidation of the security instrument. The form of security instrument may be changed from time to time by mutual consent of Port and Cliff's. If Teamwork elects to deposit a certificate of deposit or other interest bearing instrument as a security deposit, Teamwork shall be entitled to

all interest payable on such certificates or instruments as the same becomes due if Teamwork has made arrangements for such interest payments to be made directly to Teamwork by the financial institution issuing such certificates or instruments. Port shall have no responsibility to pay, nor to make arrangements for payment, to Teamwork of interest accruing on such certificates or instruments but in any event shall have no right to retain said interest. If Teamwork deposits certificates of deposit or other interest-bearing instruments as a security deposit, Teamwork shall renew or replace such instrument not later than ten days prior to expiration thereof, and, if Teamwork fails to do so, Port shall be entitled to cash such instrument and to hold the funds so obtained as the Negotiating Fee required pursuant to Section 2.

If Tenant elects to use a letter of credit as a Negotiating Fee, Teamwork shall keep the same, at its expense, in full force and effect throughout the Negotiating Period and until the sixtieth (60th) day after the Expiration Date or other termination hereof. Such letter of credit shall provide for sixty (60) days' prior written notice to Port by the issuing institution in the event of non-extension, cancellation or material change thereof. In such event, Teamwork shall replace the letter of credit at least ten days prior to expiration thereof, and, if Teamwork fails to do so, Port shall be entitled to present its written demand for payment of the entire face amount of said letter of credit and to hold the funds so obtained as the Negotiating Fee, or Option Payment referenced in Section 2 hereof.

2. Extension of Negotiating Period.

a. Option Period. Teamwork shall have two (2) one-month options (each an "Option Period") to extend the Exclusive Negotiation Period, commencing on _____. Teamwork shall exercise each option to extend by written notice of the exercise of such option delivered with cash, or a security instrument of One Thousand Dollars (\$1,000.00) per Option Period as an addition to the negotiating fee (each an "Option Payment") to Port at the address for notice set forth in Paragraph 8 below, not less than ten (10) days prior to the commencement of the next Option Period. In the event that the parties have been unable to execute a lease prior to the expiration of the original term of this Exclusive Right (or the preceding Option Period, if applicable) due solely to the failure of the San Francisco Department of City Planning Office of Environmental Review ("OER") to complete its environmental evaluation or a complete application timely submitted to OER by Teamwork in time for execution of a lease, or the non culpable failure of Teamwork to secure all of the permits and other regulatory approvals to operate a restaurant on the Site, despite Teamwork having diligently initiated and pursued efforts to do so, Port shall waive its rights to the appropriate Option Payment. This waiver shall not apply if Teamwork causes the delay by its failure to comply with requests for information or other OER requirements or if Teamwork fails to timely initiate and diligently pursue securing of all other required permits and regulatory approvals.

b. Option Payment Non-Refundable. Each Option Payment shall be subject to the provisions of Section 1.a. and 1.b. except as otherwise provided herein. Teamwork failure to exercise any Option Period in accordance with this paragraph 2 shall extinguish all future Option Periods and shall terminate this Exclusive Right as of the last date of the Term or the applicable Option Period.

3. Negotiation of Lease. During the Exclusive Negotiation Period, Port and Teamwork shall seek to complete a lease which shall meet all leasing parameters as approved by the Port

Commission. Both parties hereto agree to diligently and continuously negotiate the terms of such a lease in good faith.

The terms and conditions of lease shall be in substantial conformity with the terms and conditions set forth in Exhibit 1 attached hereto which have been agreed upon by the parties; provided, however, such terms are subject to change by mutual agreement of the parties. The parties acknowledge that the terms and conditions on Exhibit 1 merely purport to set forth general principles upon which the parties have agreed; and do not commit the Port to entering into a lease. This agreement shall not constitute an acceptant of the terms of Teamwork's proposal terms, but shall be a starting project for negotiations. Any binding lease shall be subject to review and approval by the parties, their respective legal counsel, the San Francisco Port Commission, San Francisco Board of Supervisors (if required). The parties further acknowledge that certain regulatory approvals are required for the use of the Site (collectively "Regulatory Approvals"), including, but not limited to, all necessary approvals from the Bay Conservation and Development Commission ("BCDC") and environmental review by the Office of Environmental Review of the City and County of San Francisco ("OER") pursuant to the California Environmental Quality Act ("CEQA"). Environmental review by OER shall be completed prior to the approval of any lease by the Port, and the Port will not approve any such lease unless the Port has considered the environmental review documents and determined that the project is exempt under CEQA or the project would have no significant adverse effects on the environment or, if any significant adverse effects are identified, the Port must find that such adverse impacts have been mitigated, required changes in the project to mitigate such impacts, or else made a statement of overriding considerations as provided in CEQA. The effectiveness of any such lease shall be conditioned upon Teamwork obtaining all other required Regulatory Approvals.

4. Regulatory Approvals, Submittals, and Disclosures.

a. Teamwork Obligations. Except as provided in subsection 4.b below, Teamwork agrees:

(i) It shall diligently and in good faith initiate applications to pursue all Permits and Regulatory Approvals;

(ii) It shall be solely responsible for obtaining all Permits and Regulatory Approvals, and Teamwork shall not seek any Permit or Regulatory Approval without first obtaining the approval of Port;

(iii) It shall bear all costs associated with or complying with any necessary, Permit or Regulatory Approval except those costs incurred by the Port in complying with subsection 4.b, below;

(iv) It will pay and discharge any fines or penalties imposed as a result of the failure of Teamwork to comply with the terms and conditions of any Permit or Regulatory Approval, and Port shall have no liability, monetary or otherwise, for said fines and penalties.

b. Port's Obligations. Port agrees that it will promptly cooperate with Teamwork in filing for, processing and obtaining all Permits and Regulatory Approvals, and to the extent required by any regulatory agency issuing a Permit and Regulatory Approval, it will join with Teamwork as co-applicant in filing, processing and obtaining all Permits and Regulatory Approvals necessary for the permitted uses. Nothing contained herein shall be deemed to limit or

otherwise constrain Port's discretion, powers and duties as a regulatory agency of the City with certain police powers.

c. Indemnification. To the fullest extent permitted by law, Teamwork agrees to indemnify and hold City, Port and their officers, agents and employees harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Teamwork failure to obtain or comply with the terms and conditions of any Permit or Regulatory Approval regarding Teamwork operations at the Site.

d. Submittal of Information. Teamwork agrees to submit to Port, OER, BCDC and any other regulatory agency having approval over the project, all specifications, descriptive information, studies, reports, disclosures and any other information required to satisfy the application filing requirements of those agencies.

5. Non-Assignment. The parties acknowledge that Port is entering into this Exclusive Right on the basis of the special skills, capabilities and experience of Cliff's. This Exclusive Right is personal to Teamwork and is non-assignable without the written approval of the Port Executive Director.

6. Default.

a. Event of Default. The occurrence of any of the following shall constitute a default by Teamwork after notice of the default and the expiration of the applicable cure period, if any:

(a) Failure to pay any sums due hereunder when due.

(b) Failure to perform or abide by any other provision of this Exclusive Right if such failure is not cured within twenty (20) days after notice has been given to Cliff's. If the default cannot reasonably be cured within 20 days, Teamwork shall not be in default of this Exclusive Right if Teamwork commences to cure the default within the 20-day period and diligently and in good faith continues to cure the default.

(c) Either (a) the filing by Teamwork or its corporate parent of a petition to have Teamwork adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by Teamwork or its corporate parent for the benefit of creditors; or (b) the filing by or against Teamwork or its corporate parent of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of Teamwork or its corporate parent or of any substantial part of Teamwork assets or those of its corporate parent.

b. Port's Remedies. In the event of default, Port, at its option, may terminate this Exclusive Right upon written notice to Cliff's, sent in accordance with Section 8 below. This remedy is not exclusive, but shall be cumulative with any remedies now or later allowed by law.

7. Attorneys Fees In the event of any action or proceedings at law or in equity between the Port and Teamwork to enforce any provision of this offer to protect or establish any right or remedy of either party to this agreement, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses as determined by the court, including reasonable attorneys' fees, incurred therein by such prevailing party; and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney's fees shall be included in and as a part of such judgment. For purposes of this Exclusive Right, reasonable fees of attorneys of the Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by

reference to earliest year of admission to the Bar of any State) who practice in the City in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

8. Notices. Any notice given under this Exclusive Right shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given. For the convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed below or such other numbers as may be provided from time to time.

Port: **Commercial Property Manager**
Port of San Francisco
Room 3100, Ferry Building
San Francisco, CA 94111
Facsimile: (415) 274-0578
Telephone: (415) 274-0510

John Cain, AKA Teamwork

Facsimile:
Telephone: (

In the event that Teamwork must be legally served, Teamwork's agent for service of process is the same as above.

Any mailing address or facsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Exclusive Right shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A person may not give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, original, of a facsimile copy of the notice.

9. City Requirements

a. Non-Discrimination.

(i) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identify, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of any City employee working with or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services,

or membership in all business, social, or other establishments or organizations operated by Tenant.

(ii) Subleases and Other Subcontracts. Tenant shall include in all subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of subsection (i) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this lease.

(iii) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12.2(b) of the San Francisco Administrative Code.

(iv) HRC Form. On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the San Francisco Human Rights Commission.

(v) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

b. MacBride Principles-Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

c. Tropical Hardwood Ban. City urges Teamwork not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood wood products, virgin redwood or virgin redwood wood products.

d. Burma (Myanmar) Business Prohibition. Teamwork represents to Port that Teamwork is not the government of Burma (Myanmar), that Teamwork is not a person or business entity organized under the laws of Burma (Myanmar), and that Teamwork is not a "prohibited person or entity," defined in Section 12J.2.G. of the San Francisco Administrative

Code as any person or entity designated by the Investor Responsibility Research Center as having investments or employees in Burma, or any person or entity that licenses any person or entity organized under the laws of Burma (Myanmar) to produce and market its products. Port reserves the right to terminate this Lease for default if Teamwork violates the terms of this section 9.d.

Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of Teamwork to comply with any of its requirements shall be deemed a material breach of this Exclusive Right. In the event Teamwork fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, Teamwork shall be liable for liquidated damages for each violation in the amount of One Thousand Dollars (\$1,000.00).

(e) **Captions Used.** Captions or titles utilized in the terms and conditions of this Exclusive Right are used for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

(f) **Time is of the Essence.** Time is of the essence of each provision of this Exclusive Right.

(g) **First Source Hiring.** The City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code §83.1 et. seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Pursuant to §83.7(b) of the First Source Hiring Ordinance, the Port Commission has adopted a First Source Hiring Implementation and Monitoring Plan ("Port Plan") subject to approval by the First Source Hiring Administration. Tenant acknowledges receiving and reviewing the First Source Hiring Ordinance. Under Section 83.9(d) of the first Source Hiring Ordinance, compliance by an employer with the Port Plan is deemed to be compliance with the provisions of the First Source Hiring Ordinance.

Based on the foregoing Tenant agrees to comply with the Port Plan through compliance with all of the following measures:

(a) Tenant shall notify the City and County of San Francisco's Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the ***Job Survey Form*** provided by the Port of San Francisco. The Port will also provide the Tenant with a detailed instruction sheet summarizing the procedure for the commencement of the lease. Tenant shall return the ***Job Survey Form*** to the Port within 30 days after execution of the lease by the Port and Tenant.

For purposes of this Agreement the terms "Entry Level Position", "San Francisco Workforce Development System", "Qualified Economically Disadvantaged Individual", and "First Source Hiring Agreement" shall have the meaning provided in Section 83.4 of the San Francisco Administrative Code.

Tenant shall notify the San Francisco Workforce Development System of all vacancies for existing or new Entry Level Positions on the premise, during the lease term, and shall offer the San Francisco Workforce Development System the first opportunity to provide Qualified Economically Disadvantaged Individuals for employment in these positions.

(b) Tenant shall not publicize or otherwise post such vacancies until the San Francisco Workforce Development System refers Qualified Economically disadvantaged Individuals for employment in these positions or notifies Tenant that no Qualified Economically

Disadvantaged Individuals are available for the particular vacancies. The San Francisco Workforce Development System shall respond to Tenant within ten (10) business days. After 10 business days, if the San Francisco Workforce Development System does not refer applicants, Tenant can advertise and fill Entry Level Positions outside of the City referral system.

(c) Tenant shall interview qualified applicants and use good faith in hiring applicants. Tenant shall maintain good records of recruitment and hiring process, and shall permit Port or City to audit such records upon request.

Pursuant to Section 83.10 of the Ordinance, if upon administrative review, it is determined that Entry Level positions were not made available to the San Francisco Workforce Development system for referral of Qualified Economically Disadvantaged Individuals, and the Employer does not remedy the violations, the Employer shall be assessed a penalty in the amount of \$2,070 for every new hire for an Entry Level Position improperly withheld from the First Source Hiring process.

WHEREFORE, this Exclusive Right to Negotiate was executed by the parties hereto on the last date set forth hereinbelow.

PORT:
CITY AND COUNTY OF SAN FRANCISCO,
A municipal corporation, operating
by and through the SAN FRANCISCO
PORT COMMISSION

TENANT:
JOHN CAIN, AKA TEAMWORK

By _____
Kenneth E. Winter
Director of Real Estate

By _____
Its _____

Dated: _____

Dated: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By _____
Deputy City Attorney

Dated: _____

Prepared By Jeffrey A. Bauer, Senior Commercial Leasing Manager _____ (Initials)

EXHIBIT 1: PRINCIPLES AND TERMS FOR NEGOTIATIONS

Landlord	Port of San Francisco
Tenant	John Cain, AKA Teamwork
Party to the Exclusive Right to negotiate	John Cain, AKA Teamwork
Lease Term	10 years
Options	None
Rent	
Annual Minimum	To be negotiated
Annual Minimum Rent During Construction	
Percentage	First year: to be negotiated
Rent Credits	None
Escalations	Annual CPI
Premises	[] square foot site, as shown on attachment
Condition of Site	To be negotiated
Estimated construction Cost	\$60,000
Minimum equity Contribution	\$60,000
Loan	None
Shareholders	[]

EXHIBIT 1: PRINCIPLES AND TERMS FOR NEGOTIATIONS (continued)

City Requirements	Tenant will comply with all City requirements, including non-Discrimination in Contracts and Property Contracts, Tropical Hardwood and Virgin Redwood Ban, MacBride Principles – Northern Ireland, Tobacco Products Advertising Ban, San Francisco Integrated Pest Management Program, Employee Signature Authorization, and First Source Hiring Initiative.
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G:\AGENDA - YEAR 2003\Restaurant opportunity at Pier 28 & half\qy\3/13/03.doc



Willie Lewis Brown, Jr.
Mayor

Contract Compliance
Dispute Resolution/Fair Housing
Minority/Women/Local Business Enterprise
Lesbian Gay Bisexual Transgender & HIV Discrimination

Virginia M. Harmon
Executive Director

MEMORANDUM

TO: Ken Winters, Director, Real Estate, Port of San Francisco.
Jeffrey Bauer, Project Manager, Port of San Francisco.

FROM: Selormey Dzikunu, Contract Compliance Officer, HRC. 

DATE: February 7, 2003.

RE: Award Eligibility For Pier 28.5 Restaurant Development RFP.

The Human Rights Commission ("HRC") has reviewed the panelists' scores of the RFP proposals together with the panelists' interview scores. HRC reviewed compliance with all HRC requirements, and therefore approve the conclusion of the Port staff with respect to the highest ranked candidate.

Three candidates were short-listed for interviews after the Port panelists, in an HRC monitored RFP Evaluation Meeting, scored the RFP proposals. The short-list candidates were as follows: Team Work (John Cain), Crab Shack, (Barbara Tice) and Boon (Boonsathien, Reilly and Stroud).

The HRC also monitored the interviews of all short-list candidates. The total scores for both the RFP Evaluation and the Interviews are as follows:

COMBINED PANELISTS' RFP EVALUATION AND INTERVIEW SCORES

PROPOSER	TOTAL SCORES	RANK
TEAM WORK, JOHN CAIN	153	1
CRAB SHACK, BARBARA TICE	145	2
BOON, BOONSATHIEN, REILLY & STROUD	95	3

Based upon the above, HRC declares Team Work, represented by John Cain as the highest ranked candidate eligible for the award of the Pier 28.5 Restaurant Development Contract and Lease. Attached is a more detailed breakdown of the scores. If you have any questions, please do not hesitate to call me at (415) 274-0511.



25 Van Ness Avenue
Suite 800
San Francisco
California 94102-6033

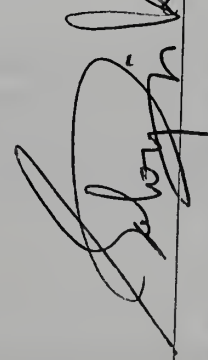


TEL (415) 252-2500
FAX (415) 431-5764
TDD (415) 252-2550
<http://www.sfhumanrights.org>



WRITTEN RESPONSE & INTERVIEW SCORES FOR PIER 28.5 RESTAURANT DEVELOPMENT RFP

PANELISTS	JB		PD		BR		KW		TOTAL		GRAND TOTAL	RANKING
	Written	Interview	Written	Interview	Written	Interview	Written	Interview	Written	Interview		
COMPANY												
TEAM WORK, JOHN CAIN	25	16	22	17	20	15	23	15	90	63	153	1
CRAB SHACK, BARBARA TICE	22	17	20	16	18	18	21	13	81	64	145	2
BOONSATHIEN, REILLY, STROUD	14	13	13	10	13	9	13	10	53	42	95	3

 2/7/03

Prepared by: Selormey Dziku

Contract Compliance Officer, Human Rights Commission



MEMORANDUM

March 17, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams

FROM: Douglas F. Wong *[Signature]*
Executive Director

SUBJECT: Request for Authorization to Award Construction Contract No. 2679 "Downtown Ferry Terminal Public Pier" to Dutra Construction Inc.

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO AWARD CONTRACT NO. 2679, "DOWNTOWN FERRY TERMINAL PUBLIC PIER," TO DUTRA CONSTRUCTION INC.

INTRODUCTION

Port staff requests that the Commission authorize the award of construction Contract No. 2679, "Downtown Ferry Terminal Public Pier," to Dutra Construction Inc., the lowest responsive and responsible bidder. Under this project, the Port would provide required public access improvements through construction of a 100-foot pier extension to connect the Embarcadero Promenade to the existing freestanding breakwater, and a circular terminus at the end of the pier, which extends 600-feet into the Bay. The scope of this contract will be to construct the structural trestle and deck only. All surface finishes will be handled in a future contract. Once the finishes are installed in the future, this project will allow visitors to walk out over the Bay, fish, view interpretive signage about ferry activities, Bay currents and habitat, and observe ferry activities in the new, adjacent harbor, and enjoy views of the City and Bay Bridge.

SUMMARY OF BIDS

On October 8, 2002, the Commission authorized advertisement for competitive bids for Contract No. 2679, "Downtown Ferry Terminal Public Pier." The Human Rights Commission Staff set a subcontracting goal of a combined 10% MBE and WBE goal for the project (i.e., the goal can be satisfied with 10% MBE, 10%WBE, or any combination of MBE and WBE participation that totals 10%).

This Print Covers Calendar Item No. 6B

Port Staff published the invitation for bids in January 2003, and held a pre-bid conference on February 10, 2003. Port Staff received five bids on February 21, 2003. The Port Engineering and Human Rights Commission Staff reviewed the bids and have determined that Dutra Construction Inc. is the lowest responsive, responsible bidder with a bid price of \$1,025,000.00. A summary of all of the bids is attached.

FUNDING

The project cost will be funded as follows:

Funding Source	Amount
ABAG Bay Trail Grant	\$180,000.00
Coastal Conservancy Grant	\$360,000.00
NOAA Grant	\$102,500.00
State Grant through DPW	\$50,000.00
Port Capital Funds	\$235,000.00
Wildlife Conservation Board Grant	\$200,000.00
Total Available Funds	\$1,127,500.00

SUMMARY

Port staff recommends that the Commission authorize the award of the Contract No. 2679 to Dutra Construction Inc. for the amount of \$1,025,000.00, plus a 10% contingency, \$102,500.00, for a total of \$1,127,500.00. Staff also recommends that the Commission authorize the Executive Director to accept the work once it is complete.

Prepared by: Mojgan Yousefkhan, Project Manager,
for Nieret Mizushima, Chief Harbor Engineer

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 03-23**

- WHEREAS, the Port Commission, at its meeting on October 8, 2003, authorized the advertisement of the construction contract for the Downtown Ferry Terminal Public Pier, Contract No. 2679; and
- WHEREAS, Port staff received five bids on February 21, 2003; and
- WHEREAS, the Port Engineering and the Human Rights Commission Staff reviewed the bids and have determined that Dutra Construction Inc. is the lowest responsive, responsible bidder; and
- WHEREAS, Dutra Construction Inc. bid price is \$1, 025,000.00 and its bid meets the MBE/WBE goals; and
- WHEREAS, the project cost will be funded from Port capital funds and several grant funds; now therefore be it,
- RESOLVED, the Port Commission hereby authorizes Port staff to award construction Contract No. 2679 for the Downtown Ferry Terminal Public Pier to Dutra Construction Inc. for the amount of \$1,025,000.00, plus a 10% contingency of \$102,500.00; and be it further
- RESOLVED, the Port Commission hereby authorizes the Executive Director to accept the work once it is complete

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of March 25, 2003.

Secretary

BID SUMMARY RESULT

Project: Downtown Ferry Terminal Public Pier
 Contract No.: 2679
 Project Engineer: Joe Roger
 Project Manager: Mojgan Yousefkhani

Prepared By: Mojgan Yousefkhani
 Bids Opening Date: 2/21/03

Bid Item	DESCRIPTION	Quantity	Seto's Construction SF, CA		Dutra Construction SR, CA		Valentine Corp. SF, CA		Yerba Buena Eng. & Cons. SF, CA		Mitchell Eng. SF, CA	
			Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	Base Bid: For Completing the downtown Ferry Terminal Public Access as indicated on the contract, excluding Bid item nos. 2 through 9	N/A	N/A	\$727,800.00	N/A	\$448,270.00	N/A	\$601,990.00	N/A	\$568,000.00	N/A	\$924,206.00
2	24- inch Octagonal Piles	1092	196	\$214,032.00	150	\$163,800.00	220	\$240,240.00	236	\$257,712.00	167	\$182,364.00
3	W14 X 90 Vertical Steel Piles	765	38	\$29,070.00	40	\$30,600.00	40	\$30,600.00	46	\$35,190.00	40	\$30,600.00
4	W14 X 145 Vertical Steel Piles	441	352	\$155,232.00	170	\$74,970.00	400	\$176,400.00	424	\$186,984.00	364.6	\$160,788.60
5	HP 14 X 89 Batter Steel Piles	829	30	\$24,870.00	40	\$33,160.00	35	\$29,015.00	35	\$29,015.00	35	\$29,015.00
6	HP 14 X 117 Batter Steel Piles	478	250	\$119,500.00	140	\$66,920.00	270	\$129,060.00	299	\$142,922.00	270	\$129,060.00
7	W14 X 145 Batter Steel Piles	552	205	\$113,160.00	140	\$77,280.00	220	\$121,440.00	243	\$134,136.00	184	\$101,568.00
8	Allowance for mobilization			\$46,600.00		\$120,000.00		\$49,624.00		\$150,000.00		\$80,000.00
9	Bubble Curtain System			\$89,700.00		\$10,000.00		\$80,000.00		\$60,000.00		\$70,000.00
Grand Total All Lump Sump Items and Unit Price Items				\$1,519,964.00		\$1,025,000.00		\$1,458,369.00		\$1,563,959.00		\$1,707,601.60
Bid Discount				10.00%		0.00%		0.00%		10.00%		10.00%
Grand Total After												
Applying Bid Discount				\$1,367,967.60		\$1,025,000.00		\$1,458,369.00		\$1,407,563.10		\$1,536,841.44



MEMORANDUM

March 18, 2003

TO: MEMBERS OF THE PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams

FROM: Douglas F. Wong *DW*
Executive Director

SUBJECT: Amendment to Port Commission Resolution No. 03-11, Emergency Contract with Titan Maritime, LLC, from original amount of \$1,172,000 to the revised amount of \$1,213,098 .

DIRECTOR'S RECOMMENDATION: Amend Port Commission Resolution No. 03-11, by authorizing and ratifying the Port's emergency contract with Titan Maritime, LLC, in the revised amount not to exceed \$1,213,098, for salvage and recovery operations for Drydock #1.

BACKGROUND

On February 11, 2003, Port staff requested and received Port Commission approval of the Port's emergency contract with Titan Maritime for services related to salvage and recovery of Drydock #1. (Port Commission Resolution No. 03-11.) Based upon a cost estimate of \$1,182,000 from Titan Maritime, Port staff sought a resolution for approval of contract payments in that amount. On February 11, 2003, the Port Commission approved and amended Resolution No. 03-11, authorizing the emergency contract with Titan Maritime LLC for the amount of \$1,172,000. The resolution, as amended, represented a reduction in the requested contract amount by \$10,000, which staff had identified as a contingency for the estimated final cost of the Titan contract. With the adoption of the amended resolution, authorizing contract payments of \$1,172,000, the Port Commission directed staff to return to the Commission for approval of the final amount of the Titan Maritime contract, once ascertained. Thereafter, Titan completed its submittal of actual invoices for services rendered under the emergency contract, which total an additional \$41,098 greater than the contract amount of \$1,172,000 as approved under Commission Resolution No. 03-11. This amount represents costs for rail and air transport of Titan's equipment and personnel, hotel, car rental and third party equipment rental such lighting. These additional invoices result in a total contract cost of \$1,213,098.

Having received the final contract invoices for emergency services performed by Titan Maritime, LLC, staff recommends that the Port Commission approves the Titan Maritime LLC contract in the revised amount of \$1,213,098.

Prepared by: John Davey, Maritime Deputy Director

This Print Covers Calendar Item No. 7A

**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 03-24

WHEREAS, On February 11, 2003, the San Francisco Port Commission adopted Resolution No. 03-11, authorizing and ratifying the Port's emergency contract with Titan Maritime, LLC, to perform salvage operations to recover Drydock #1 and transport it to a safe harbor at the Port, for the amount of \$1,172,000; and

WHEREAS, Resolution No. 03-11 was based on estimates of cost provided by Titan Maritime LLC and known to Port staff on that date; and,

WHEREAS, Subsequent to February 11, 2003, Titan Maritime LLC submitted to Port staff additional invoices from third party vendors that performed services under the emergency contract and which exceed the earlier cost estimate by \$41,098; and

WHEREAS, Port Staff has reviewed these additional invoices and found them to be reasonable and consistent with the operation and services under the contract. The additional invoices in the sum of \$41,098 plus the existing contract amount of \$1,172,000, previously authorized, equal \$1,213,098, which represents the final cost for the Titan Maritime LLC emergency contract; now therefore, be it

RESOLVED, That the Port Commission amends its prior Resolution No. 03-11, by hereby authorizing and ratifying the Port's emergency contract with Titan Maritime, LLC, in the revised amount not to exceed \$1,213,098. and be it further.

RESOLVED, That the Port Commission hereby authorizes the Executive Director to seek approval of the Board of Supervisors of said emergency contract with Titan Maritime, LLC.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of March 25, 2003.

Secretary



MEMORANDUM

March 18, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams

FROM: Douglas F. Wong
Executive Director 

SUBJECT: Request for authorization of Executive Director, or his designee, to negotiate and enter into the proposed Fourth Amendment to Lease L-11320 with San Francisco Drydock, Inc. at Pier 70.

DIRECTOR'S RECOMMENDATION: AUTHORIZE EXECUTIVE DIRECTOR, OR HIS DESIGNEE, TO NEGOTIATE AND ENTER INTO THE FOURTH AMENDMENT TO LEASE L-11320 WITH SAN FRANCISCO DRYDOCK, INC.

Background

San Francisco Drydock, Inc. (SFD) is a wholly owned subsidiary of United Defense Industries, and currently employs an average of 250–300 skilled laborers year-round, representing ten different trade unions. During peak periods of repair activity, the yard has recently provided jobs for over 1,000 people.

SFD currently leases 18 acres of land and 16 acres of water at Pier 70, where it has conducted ship repair operations since 1987 pursuant to Port Lease #L-11320. Over the years, the original lease has been modified by three amendments (as amended, the "Lease"). Fourteen buildings, two floating drydocks, and five functional cranes also comprise the leasehold. Currently SFD pays rent of \$104,167 monthly, or \$1,250,000 per year for these premises, however, the current rent level is the highest installment of a graduated payment schedule designed to average \$1 million in annual rent over the prior five years.

The Lease provides SFD with the right to renegotiate rent terms effective as of December 17, 2002, and the right to terminate the lease upon 90 days notice if negotiations are unsatisfactory to them. SFD appropriately exercised its right to renegotiate the rent, and the

parties have been negotiating in good faith for many months. Because of the complexity of the discussions, the negotiation period in the Lease was extended and expires on March 31, 2003.

Part of the complexity of the discussions involve Buildings 113 and 104, which are unreinforced masonry buildings (UMB) dating back to the early 1900s that are also currently included in the leasehold premises. The City's building code requires that these UMB(s) be seismically upgraded to current earthquake standards by February of 2004. Under the Lease, SFD has the obligation to maintain the premises only in as good a condition as when received. Further, unlike Port leases executed more recently, SFD's Lease does not expressly obligate them to comply with any later enacted laws such as the City's building code standards relating to UMBs.

Staff believes the parties have tentatively agreed upon mutually agreeable terms as described in detail below. It recommends that the Port Commission approve the proposed restructuring and authorize the Executive Director, or his designee to negotiate and enter into a Fourth Amendment to the Lease on terms consistent with this Staff Report and Resolution 03-25, and in a form approved by the City Attorney.

Proposed Restructuring of Lease Arrangement

Currently the Lease requires SFD to pay a fixed monthly rent subject to CPI adjustments implemented on each fifth anniversary date. Staff is now proposing to change the rent structure to a percentage rent with a minimum rent guarantee of \$850,000 per year. Staff is also proposing to establish a Capital Improvements Fund that will be supported by a contribution of fifty percent of the total annual rent the Port is eligible to receive between the minimum of \$850,000 and a maximum of \$1,250,000. This fund will be used to reimburse SFD for any capital projects that they complete from a list of mutually identified and agreed upon undertakings. Furthermore, SFD's leasehold will be reduced by 208,388 net square feet. Here is a more detailed description of the proposed terms of the Fourth Amendment to the Lease:

- a. Change the rent schedule from a fixed monthly basis to an \$850,000 annual minimum plus percentage rental due quarterly and calculated at 3.3% of SFD's audited gross revenues from December 17, 2002 through December 16, 2007. This structure will allow the Port to participate in an anticipated increase in ship repair revenues generated by the growing demand for the maintenance and repair of both commercial vessel fleets such as the expanding passenger cruise fleet, as well as defense craft, exemplified by additional Navy contract work gained in the fourth quarter of 2002.
- b. Reduce net leasehold space by 27% (208,388 sq.ft.) by:
 1. Requiring SFD to vacate Pier 70 Buildings 104, 113, 114, and 115 by no later than January 31, 2004, and

2. Adding Building 19 and its external access ways (8,878 sq.ft.) to the leasehold in order to accommodate functions that cannot be shifted into other buildings within SFD's existing leasehold.
- c. Establish a Capital Improvements Fund that will be supported by a contribution of fifty percent of the total annual rent the Port is eligible to receive between the minimum of \$850,000 and a maximum of \$1,250,000. This fund will be used to reimburse SFD for any capital projects that it completes and for which it provides receipts from a list of mutually identified and agreed upon projects. The maximum impact upon revenues to the Port from this would be \$200,000 annually, but these funds would be used for projects primarily designed to enhance the facility's long-term marketability and upgrade the yard's capability for handling the largest ships in the commercial Pacific fleets. This move would allow SFD to enter the big-ship market and generate revenues not previously attainable.
- d. Grant both parties the right to re-negotiate the lease terms in the winter of 2004. If the parties fail to reach agreement, each party will have the right to terminate the lease upon 90 days written notice. Also, if the parties fail to reach agreement, then on December 17, 2004 the rent will revert to a base of \$100,000 per month plus the cost of living adjustment that would be effective December 17, 2004 under the original terms of the Lease.
- e. Require SFD to immediately provide the Port with a current conditions survey of Drydock 2. SFD must then also provide the Port with a market appraisal to be conducted by a surveyor jointly approved by the Port and SFD. Allow the Port to share evenly in the costs of the market appraisal after the first \$1,500 is paid for by SFD.

Thereafter, and no later than 6 months prior to end of the five-year term, require SFD to provide another condition survey and appraisal to be conducted by a surveyor jointly approved by the Port and SFD. The costs of this survey and appraisal will be shared evenly between the Port and SFD.

Recommendation

Based solely on the \$850,000 minimum rent guarantee, revenues to the Port from this proposed amendment will generate enough funds to Provide a 6% return on the Port's investment in capital equipment (drydocks and cranes), while still yielding \$.86/sq.ft. rent for covered space, and \$.25/sq.ft. for open space. This is an increase of 14% on rents for covered space over current levels, while open space will continue to yield the same.

Moreover, both rent levels exceed the current upper end rent parameters of 30¢ per sq.ft. for covered space and 16¢ per sq.ft. for paved, open pace approved by the Commission in 1999. While the proposal could reduce the Port's annual rent by \$400,000 from the current level if based solely on the yard's minimum rent guarantee, conservative estimates of SFD's sales over the next five years based on their forecasts and our market studies indicate that the Port will likely receive more than the minimum rent in each of the five

years covered by this amendment under the proposed percentage rent structure. It should be noted that the current rent level is the highest installment of a graduated payment schedule designed to average \$1 million in annual rent over the prior five years, and if only the proposed minimum rent were collected in any given year, this would reduce the Port's annual rent by \$250,000 as compared to the prior five-year average.

Furthermore, the decrease in premises proposed by this amendment will reduce the Port's risk of liability by ensuring that all UMB's are vacated by February, 2004 as SFD will be required to move out of Buildings 113 and 104 prior to that date, and leave them unoccupied. Building 114 is an annex to Building 113, and part of the same structure. As a result, SFD will vacate this building as well. SFD will also be responsible for moving the existing functions housed in these buildings to other locations within the current premises by February 2004, and this will serve to add efficiencies to the yard through consolidations, and enhance its marketability. Additionally, SFD has agreed to vacate an adjacent property, Building 115, so that the Port can be left with a contiguous parcel of developable land comprising nearly three acres. The Building 115 complex consists of 11,500 square feet of covered space plus 20,000 square feet of paved open space, all in good condition and immediately marketable.

Based on the above, Staff recommends that the Port Commission approve the proposed restructuring of the Lease, and authorize the Executive Director or his designee, to negotiate and enter into a Fourth Amendment on terms consistent with this Staff Report, attached Resolution 03-25, and in a form approved by the City Attorney.

Prepared by: G. L. Roybal, Maritime Marketing Mgr., for
Peter A. Dailey, Maritime Director

**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

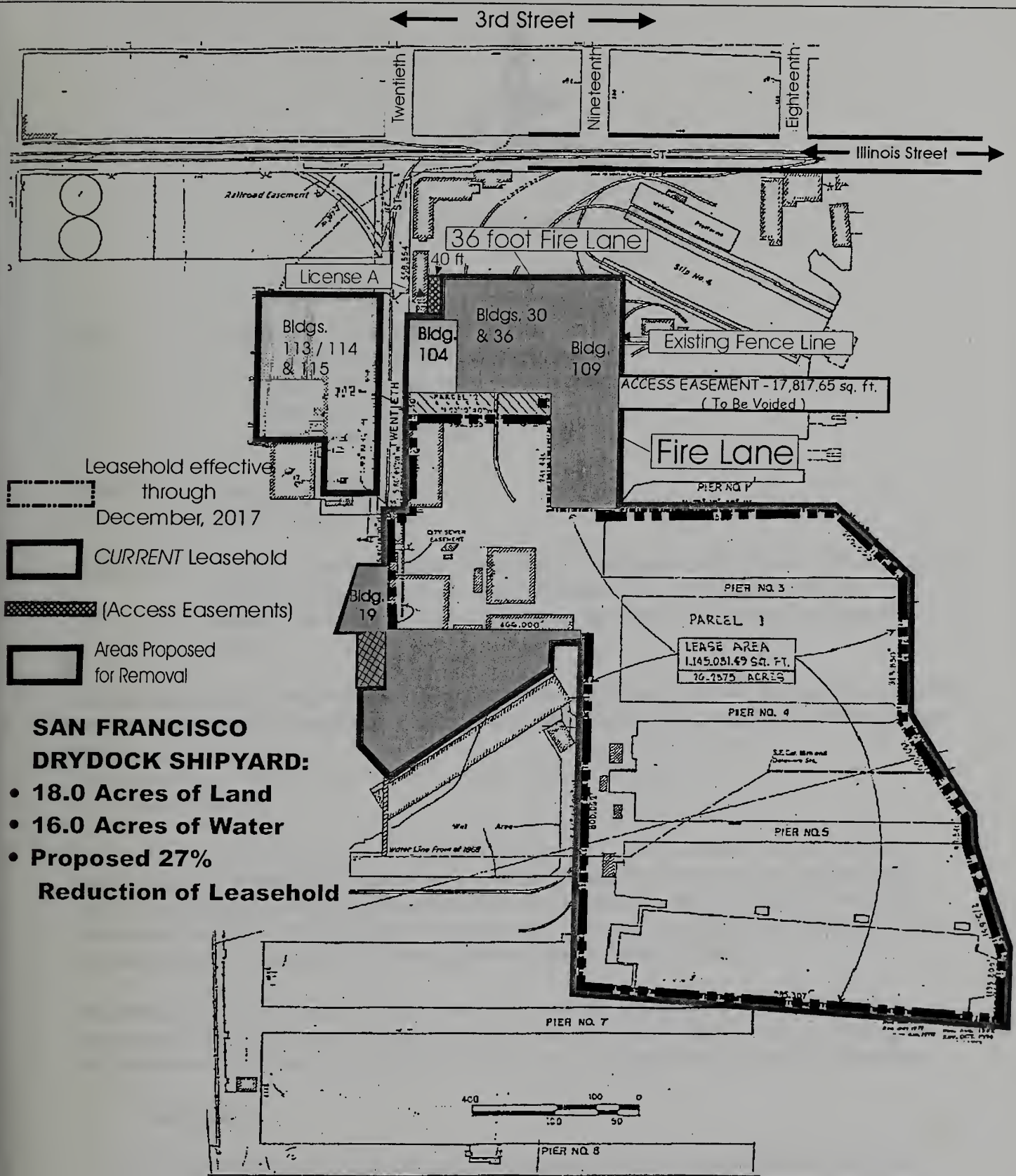
RESOLUTION NO. 03-25

- WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, Under Charter Section 3.581(g), leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and
- WHEREAS, San Francisco Drydock, Inc. (SFD), a California corporation, currently leases 18 acres of land and 16 acres of water at Pier 70 where it has conducted ship repair operations since 1987 pursuant to Port Lease L-11320 (as amended, the "Lease"), and currently employs an average of 250-300 skilled laborers year-round representing ten different trade unions; and
- WHEREAS, The Lease provides SFD the right to renegotiate rent terms effective as of December 17, 2002, and the right to terminate the lease upon 90 days notice if negotiations are unsatisfactory to them; and
- WHEREAS, SFD appropriately exercised its right to renegotiate the rent, and the extended negotiation period provided by the Lease expires on March 31, 2003; and
- WHEREAS, Port staff and SFD have negotiated in good faith for many months, and Staff believes the parties have now reached mutually agreeable terms, as set forth in more detail in the Staff Memorandum to the Port Commission dated March 18, 2003 for Agenda Item 7B ("Staff Memorandum"); and
- WHEREAS, These mutually agreeable terms include a change in the rent schedule from a fixed monthly basis to a minimum plus percentage rental that both allows the Port to participate in anticipated increases in business revenues and establishes a Capital Improvements Fund for projects designed to further enhance the shipyard's capabilities and allow SFD to enter new markets and generate additional revenues not previously attainable; and
- WHEREAS, SFD's lease premises will be reduced by 27% and result in the opportunity to re-rent currently occupied, marketable real estate, as well as a reduction in the Port's risk of liability due to the vacating of two un-reinforced masonry buildings; and

- WHEREAS, Port staff recommends that the Port Commission approve the proposed restructuring and authorize the Executive Director, or his designee, to negotiate and enter into a Fourth Amendment to the Lease on the terms and conditions outlined in the Staff Memorandum; and
- WHEREAS, Based on staff's recommendation and its own review, the Port Commission finds that the proposed restructuring of the Lease is in the best interest of the Port; now, therefore, be it
- RESOLVED, That the San Francisco Port Commission hereby approves the proposed restructuring of the Lease, and authorizes the Executive Director or his designee, to negotiate and enter into a Fourth Amendment to Lease L-11320 with San Francisco Drydock, Inc. on terms and conditions consistent with the Staff Memorandum and this Resolution 03-25, and in a form approved by the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 25, 2003.

Secretary



San Francisco Port Commission
 4th Amended Lease L-11320, Exhibit A-1
 Proposed: March 25, 2003



MEMORANDUM

March 19, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Brian McWilliams
Hon. Denise McCarthy

FROM: Douglas F. Wong
Executive Director 

SUBJECT: Request for authorization to negotiate an Exclusive Right to Negotiate Agreement with the International Museum of Women for the development and long-term lease of Pier 26 located on The Embarcadero between Harrison and Bryant Streets.

DIRECTOR'S RECOMMENDATION: Authorize the Director or his designee to negotiate an Exclusive Right to Negotiate agreement with the International Museum of Women for Pier 26.

I. Introduction

The International Museum of Women ("IMOW") plans to open a museum in 2008 in San Francisco to exhibit the global history of women and to explore contemporary gender issues. IMOW has identified Pier 26 as its preferred site and is seeking a 66-year lease at Pier 26 for construction and operation of the proposed museum. Toward this end, IMOW has requested an Exclusive Right to Negotiate ("ERN") agreement from the Port for Pier 26.

This memorandum includes a brief summary and analysis of the IMOW proposal with a recommendation to authorize Port staff to negotiate an ERN with IMOW. Staff will bring the fully negotiated ERN back to the Port Commission for its review and approval at a later date.

II. Background

Pier 26 is an approximately 157,000 square foot finger pier located directly beneath the Bay Bridge between Harrison and Bryant Streets on The Embarcadero, including a 121,000 square foot historic pier shed and bulkhead building. Currently, the Port leases space at Pier 26 to a number of small tenants (e.g. 50 SF to 8,200 SF) on a short-term basis, primarily for warehousing uses. Some of these tenants are maritime tenants.

This Print Covers Calendar Item No. 8A

In August 2001 the Board of Supervisors unanimously adopted Resolution 659-01 welcoming IMOW to San Francisco and encouraging the Port of San Francisco to negotiate with IMOW for the possible use of Pier 26, including developing mutually agreeable terms and conditions and performance benchmarks for the museum.

In February 2002, IMOW submitted a proposal to the Port for developing and operating its proposed museum at Pier 26, including a preliminary development concept, market study, and preliminary financial objectives. In September 2002, IMOW submitted additional information to the Port regarding its development team, project timeline, estimated development cost, fundraising strategy and financial analysis of the museum operation.

In October 2002, the Port undertook financial and engineering analysis of Pier 26 to better evaluate the cash-flow value of the pier as an interim-use warehouse facility. Subsequently, the Port staff and IMOW discussed certain terms and conditions that would be mutually agreeable for entering into exclusive negotiations for the proposed lease of Pier 26.

IMOW has requested to be awarded the ERN as a sole-source contract. The City Administrative Code states that it is the policy of the Board of Supervisors, except where they find it impractical or infeasible, to approve only such proposed leases involving City property that have been awarded to the highest responsible bidders in accordance with the City's competitive bidding procedures. On March 18, 2003, the Board of Supervisors unanimously adopted a resolution exempting the potential lease of Pier 26 to the IMOW from the competitive bidding policy set forth in the City Administrative Code. This resolution states that if the Port and IMOW agree upon the form of a lease for Pier 26, the Board would not disapprove of such a lease solely on the basis that it does not satisfy the competitive bidding policy.

III. Summary of IMOW Proposal

The IMOW proposal for Pier 26 is to retrofit and rehabilitate the historic pier including substructure, pier shed and bulkhead building for purposes of developing a museum and related uses including increased public access to the waterfront. IMOW intends to work with the Port to secure the historic designation of the pier and to pursue historic tax credits for the project. IMOW proposes to design and develop its program in compliance with the Burton Act and in a manner consistent with the goals and objectives of the Port's *Waterfront Land Use Plan* ("Waterfront Plan"), as discussed further under Section IV below.

A brief summary of IMOW's proposal for development and operation of a museum at Pier 26 is described in Attachments 1 and 2. Some of the museum program components include permanent and temporary exhibition galleries; centers for children and teens; auditorium, library and classrooms to serve the museum and for conferences; a café and restaurant; performance and special event rental areas; and public access. A portion of the exhibition area may be accessed free of charge from the pier apron or "PortWalk" and may focus upon the history of women and the sea. The public will have access to café and restaurant facilities, including views of the Bay and the San Francisco skyline. In addition, some compatible income-

generating uses will be included in the program, such as general office, retail, or conference space.

The development team includes consultants with waterfront development experience, including individuals who were involved in the highly successful rehabilitation and reuse of the Port's Pier 1. IMOW's staff, Board and fundraising consultants have developed a fundraising strategy based on successful work with similar projects such as the California Academy of Sciences, The Asian Art Museum, and the DeYoung Museum.

The estimated cost of the project is \$118,000,000. If awarded the ERN, IMOW proposes to negotiate a development agreement and lease with the Port and obtain the necessary approvals to construct the project within the next 2 ½ years IMOW would begin construction in January 2006 and estimates to complete construction and open its operations in June 2008.

IV. Analysis

Proposed Use. As with all long-term development projects on Port property, the Port considers IMOW's proposal for a museum encompassing the entirety of Pier 26 in the context of the Goals and Objectives of the Waterfront Plan adopted by the Port Commission in 1997. The Waterfront Plan establishes land use policies governing the waterfront property held in trust by the Port of San Francisco for the people of California pursuant to the state legislation known as the *Burton Act*.

Revitalizing the Port is among the primary goals of the Waterfront Plan, which recognizes the importance of generating capital to support maritime activities, dredging, infrastructure, and public access and park improvements. After identifying most of the Port's property as Maritime Areas that need to be reserved for maritime uses, the Waterfront Plan identifies a limited number of "Mixed Use Opportunity Areas" in which a mix of commercial and maritime land uses may be developed. The Waterfront Plan contemplates that these Mixed Use Opportunity Areas would be developed at fair market rates and the income generated from the uses would help subsidize the Port's maritime, public access and other trust responsibilities.

Pier 26 is located in one such area, the Rincon Piers Opportunity Area. It is the larger of two piers within the "Rincon Piers Opportunity Site". Unlike many of the finger piers, Pier 26 enjoys unobstructed Bay views along its entire north side and is close to Rincon Park and the downtown office area. The Development Standards in the Waterfront Plan suggests entertainment and recreational activities on Piers 26 and 28 and a part of Pier 24 (if feasible) to activate the area and provide amenities for people frequenting Rincon Park and Embarcadero Promenade. New developments should include significant waterside activities (e.g. recreational boating or other water-dependent activities) to extend a "working waterfront" south of the Ferry Building. "Museum" is among the list of acceptable commercial uses for Pier 26.

Implementation of the IMOW proposal would require a permit from the Bay Conservation and Development Commission ("BCDC") and would be reviewed by BCDC in the context of the *Special Area Plan* for the San Francisco Waterfront, amended in July 2000. The Special Area Plan suggests that a major development project on a finger pier (including Pier 26) should provide 35% of the project pier area for public access and, if feasible, additional public access to a "Bayside History Walk" within the pier shed (similar to Pier 1) and a public access feature consistent with the project and size of the pier. The Special Area Plan also provides a process, pursuant to which BCDC, upon the request of the Port, would determine whether it finds the proposed use consistent with the Public Trust Doctrine and the Port's legislative trust grant.

The development concept proposed by IMOW, including the museum, related uses and increased public access to the pier, is generally consistent with the Waterfront Plan. The IMOW proposal is limited to Pier 26 and, therefore, does not necessarily fulfill all of the objectives for the larger mixed-use Opportunity Site. If the ERN is awarded, the Port staff may seek an early determination from BCDC regarding the trust consistency of the proposed project.

Development Team. The development team has experience that is directly related to the planning, financial analysis, entitlement and rehabilitation and reuse of a historic pier facility in San Francisco. The team's credentials are commensurate with the minimum requirements typically stipulated by the Port in its requests for development proposals. The IMOW staff and Board, along with its fundraising consultant, provide relevant non-profit fundraising experience that will be critical for developing the project funds necessary to complete the project.

Financial Proposal. Over the past several months, the Port and IMOW have discussed a number of terms and conditions that would be mutually agreeable for entering into exclusive negotiations for the proposed lease of Pier 26. These terms are summarized in Attachment 3 ("Term Sheet") and would serve as the basis for negotiating the development agreement and lease if and after IMOW is awarded an ERN.

The Initial Base Rent of \$425,000 is based upon the Port's analysis of net income to the Port for Pier 26 as an interim-warehouse facility, adjusted for the amortized cost of substructure improvements. Other terms, such as the increases in Base Rent, Participation Rent, and maintenance responsibilities are consistent with other long-term development leases and with leases on Port property with non-profit organizations. While the project revenues from this contemplated lease with IMOW are expected to be less than those generated from a commercial, for-profit development, they are projected to exceed those that would be generated from continued interim leasing.

V. Conditions and Performance Benchmarks

The Port intends to seek community input throughout the ERN negotiation and project implementation process as outlined in the Port's *Waterfront Land Use Plan*. In addition to the Term Sheet, other conditions may be included in the ERN after further community outreach and input from relevant regulatory agencies. The Redevelopment Agency's "Rincon Point-South

Beach Citizen Advisory Committee" includes representatives from neighboring businesses and residents near Pier 26 and may serve as an appropriate citizens advisory group for this project.

During the ERN negotiations, the Port will work with IMOW to develop performance benchmarks to ensure that the project is pursued effectively.

VI. RECOMMENDATION

Port staff recommends that the Port approve Resolution No. 03-26 authorizing the Director or his designee to negotiate an ERN with IMOW. After the ERN has been negotiated with terms including performance benchmarks that are acceptable to Port staff and the IMOW, Port staff will submit the ERN to the Port Commission for its review and approval, seeking its authorization for the Port to enter into the ERN.

Prepared by: Kari Kilstrom
Planning & Development

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO 03-26

- WHEREAS, Charter Section B3.581 grants the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and
- WHEREAS, Under Charter Section B3.581(g), leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and
- WHEREAS, The Port owns that certain property known as Pier 26, located on The Embarcadero near the terminus of Bryant Street; and
- WHEREAS, On August 13, 2001, the Board of Supervisors unanimously adopted Resolution 659-01 welcoming the International Museum of Women ("IMOW") to San Francisco and encouraging the Port of San Francisco to negotiate with IMOW for the possible use of Pier 26, including developing mutually agreeable terms and conditions including performance benchmarks for the museum; and
- WHEREAS, Between February and September 2002, IMOW submitted information to the Port regarding its proposal for Pier 26, including a preliminary development concept, market study, preliminary financial objectives, development team, project timeline, estimated development cost, fundraising strategy and financial analysis of the museum operation; and
- WHEREAS, On March 18, 2003, the Board of Supervisors unanimously adopted a resolution exempting the potential lease of Pier 26 to the IMOW from the competitive bidding policy set forth in the City Administrative Code, and stating that if the Port and IMOW agree upon the form of a lease for Pier 26, the Board would not disapprove of such a lease solely on the basis that it does not satisfy the competitive bidding policy; and
- WHEREAS, The development concept proposed by IMOW, including the museum, related uses and increased public access to the pier, is generally consistent with the Waterfront Plan; and
- WHEREAS, IMOW's development team has experience that is directly related to the planning, financial analysis, entitlement and rehabilitation and reuse of a historic pier facility in San Francisco; and

- WHEREAS, Over the past several months, Port Staff and IMOW have discussed a number of terms and conditions that would be mutually agreeable for entering into exclusive negotiations for the proposed lease of Pier 26; and
- WHEREAS, Port staff intends to seek community input throughout the ERN negotiation and project implementation process as outlined in the Port's *Waterfront Land Use Plan*; and
- WHEREAS, Port staff recommends that the Port Commission authorize the Executive Director to negotiate an ERN with IMOW; now, therefore, be it
- RESOLVED, That the Port Commission hereby authorizes the Executive Director or his designee to negotiate an Exclusive Right to Negotiate Agreement ("ERN") with the International Museum of Women ("IMOW") for the development and long-term lease of Pier 26, provided that the Executive Director shall submit the form of the fully negotiated ERN, including performance benchmarks, to this Port Commission for its final review and approval.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of March 25, 2003.

Secretary

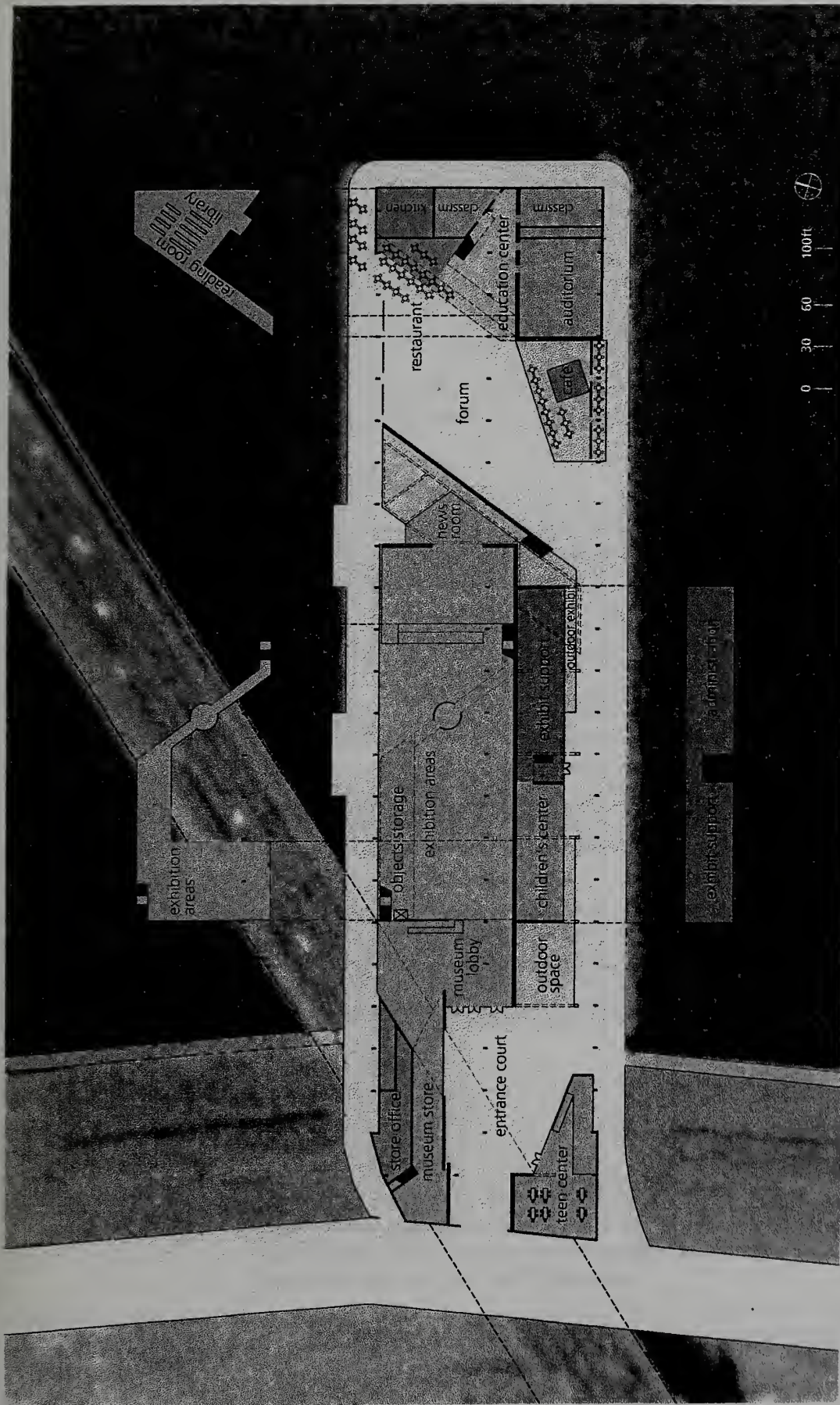
ATTACHMENT 1

International Museum of Women Proposal for Development and Operation of Pier 26

Developer/Operator:	International Museum of Women, a 501c(3) non-profit entity.
IMOW Mission:	The first museum in the world to exhibit the global history of women, explore contemporary gender issues and, through education, serve as a catalyst for continued social, cultural, economic and political change.
Project Concept:	Retrofit and rehabilitate Pier 26, including the 121,000 SF pier shed and bulkhead building, for museum and related uses, including: • Permanent and temporary exhibition galleries • Centers for children and teens • Auditorium, library and classrooms to serve the museum and be available for conferences • Café and restaurant • Performance and special event rental areas • Public access
Lead Negotiator:	Elizabeth Colton, Chairman of the Board, IMOW
Development Team:	
Project Management Consultant	Scott Lewis, Oppenheim Lewis, Inc.
Development Consultant	Janice Thatcher
Real Estate Financial Consultant	Deborah Viall, DLV Consulting, Inc.
Fundraising Consultant	James Looney, Grenzebach Glier & Associates
Legal Counsel:	Pamela Duffy, Coblenz, Patch, Duffy, Bass, LLP
Real Estate Counsel:	Laura Hannusch, Pillsbury Winthrop LLP
Market Studies and Operating Profiles	Thomas Martin, ConsultEcon, Inc.
Architect	TBD
Exhibit Design	TBD
Estimated Project Cost:	\$118,000 (including hard and soft costs for pier refurbishment and tenant improvements, exhibits, initial operating expenses, financing and fundraising)
Schedule:	
Start Construction	January 2006
Complete Construction	June 2008

ATTACHMENT 2

(Concept Site Plan)



International Museum of Women

PLAN AT PIER 26

EMDD ARCHITECTURE • Rutherford & Chelene Structural Engineering
Keen Engineering Mechanical & Electrical Engineering • Oppenheim Lewis Cost Estimator

ATTACHMENT 3

SUMMARY OF PROPOSED TERM SHEET International Museum of Women ("IMOW")

Provision	Proposed Terms as of February 13, 2003
Premises:	Pier 26, containing approximately 120,000 square feet on the ground floor of the existing building. Mezzanines may be added, increasing the overall square footage, at no increase in Base Rent.
Term:	66 years, commencing upon close of escrow.
Initial Base Rent:	\$425,000 adjusted for cost of living increases between date of execution of a development agreement and commencement of rent.
Rent Credit:	No rent credits.
Sublease Income:	IMOW intends to develop income generating Sublease Space. Port shall participate in 50% of sublease income from Sublease Space, after first deducting the following: (1) sublease transaction costs, (2) amortization of direct tenant improvement costs for the Sublease Space beyond the base building costs, (3) \$200,000 per year adjusted for cost of living as for Increase in Base Rent, and (4) pro-rated Base Rent less item (3), to Port allocated to Sublease Space.
Commencement of Rent:	Commencing upon the earlier to occur of: (1) opening of museum to the public; or (2) 18 months from commencement of term (close of escrow). No construction period rent prior to commencement of rent.
Increase in Base Rent:	Cost of living increases every 5 years, not less than 10% or more than 20%. Base index for calculation of cost of living increase shall be for month prior to execution of development agreement.
Percentage Rent:	Percentage Rent (offset by Base Rent) of Lessee's gross receipts from on-site operations, such as admissions, merchandise, food and beverage sales, event rentals, and third-party special events, but excluding sublease rent, IMOW fundraising events, grants and donations. Years 1-5: 3% Years 6-25: 4% Years 25+: 5%
Use of Premises:	Construction and operation of a world-class museum called IMOW and public access areas and complimentary, compatible income-generating uses, such as general office, retail and conference space.
Expenses:	<u>Utilities.</u> Lessee shall install, connect, maintain, repair and pay charges incurred

Provision	Proposed Terms as of February 13, 2003
	for all utilities. Port shall cooperate in providing utility connections to the Premises. <u>Insurance.</u> Lessee shall carry general liability insurance reasonably agreeable to both parties and other customary insurance. <u>Taxes.</u> Lessee shall be subject to and responsible for all city, state and federal taxes applicable to the Premises and Lessee's operations.
Maintenance:	Lessee's maintenance responsibilities shall include the pier substructure. Lessee shall make annual contributions to a Substructure Reserve Fund to fund required maintain and repairs to the pier substructure. Every five years during the term, Lessee shall perform inspections of the pier substructure, and shall establish a budget and schedule for making required maintenance and repairs to the pier substructure. Every five years, the annual contribution to Substructure Reserve Fund shall be reset for the following five years to adequate funding for agreed upon budget and schedule. Tenant shall have the right to terminate the lease in the event that, during the last 11 years of the term, either (1) the required annual contributions to the Substructure Reserve Fund exceed the annual contributions to the Substructure Reserve Fund during the previous 5-year period; or (2) required repairs exceed the balance in the Substructure Reserve Fund.
Exclusive Negotiation:	A non-refundable ERN fee of \$100,000 shall be payable as follows: \$25,000 upon execution of the ERN; and \$25,000 every 6 months during the ERN period. The ERN shall have a term of two years, which may be extended by one year at no cost to IMOW, should performance benchmarks not be met through no fault of IMOW. Port costs related to adoption of state legislation, including but not limited to staff time, consultant and legal fees, shall be paid by IMOW if BCDC and the State Lands Commission Executive Director do not both concur that the development is consistent with the Public Trust Doctrine and the Port's legislative trust grant (the Burton Act) and, as a result, adoption of legislation is required.
Assignment / Transfers:	Assignment of lease shall be permitted. All revenue from transfer, less IMOW's cost of development, shall belong to Port except transfers to another non-profit organization with no change in use of premises. Assignment shall be subject to the consent of the Port. Such consent shall not to be unreasonably withheld.

Provision	Proposed Terms as of February 13, 2003
Relocation Costs:	Lessee responsible for reimbursing Port for costs to relocate existing tenants in Pier 26, with a cap on the total reimbursement, which shall be included in any lease disposition and development agreement.
Historic Tax Credits:	Retained by Lessee.
Completion Guarantees:	As a condition to closing escrow, secure commitments from funding sources and adequate security from participants to cover cost over-runs and initial operating losses.
Performance Benchmarks:	To be negotiated prior to ERN execution.

Note: The above is not intended to be, and will not become, contractually binding and no legally binding obligations will exist unless and until the parties are able and willing to negotiate, execute and deliver mutually acceptable development agreement, lease and related transaction documents regarding the contemplated project. In addition, under San Francisco Charter, no officer or employee of the City and County of San Francisco ("City") has authority to commit the City to the transaction contemplated hereby unless and until an appropriate resolution of the San Francisco Port Commission and the San Francisco Board of Supervisors has been duly passed approving the transaction.



MEMORANDUM

March 19, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Denise McCarthy
Hon. Brian McWilliams

FROM: Douglas F. Wong
Executive Director *dfw*

SUBJECT: (1) Adopting findings, including a statement of overriding considerations and adoption of a mitigation and monitoring program, pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines in connection with the proposed Mixed-use Cruise Terminal Project located on Piers 30-32, the sale of property located on a portion of Seawall Lot 330 at the corner of Bryant and Beale Streets for a condominium project, and development of a public open space project referred to as the Brannan Street Wharf in the location of Piers 34 and 36 (Resolution No. 03-27).

(2) Approval of the following documents and actions in connection with the development of a Mixed-use Cruise Terminal Project located on Piers 30-32, the sale of property located on a portion of Seawall Lot 330 for development of a condominium project, and development of a public open space project referred to as the Brannan Street Wharf in the location of Piers 34 and 36 (Resolution No. 03-28):

(a) Approval of a Lease Disposition and Development Agreement governing disposition and development of the Mixed-Use Cruise Terminal Project at Piers 30-32, and development of the Brannan Street Wharf;

(b) Approval of a Lease with San Francisco Cruise Terminal, LLC for a 66-year lease of Piers 30-32 for use as a Mixed-Use Cruise Terminal Project;

(c) Approval of a Purchase and Sale Agreement governing the sale to San Francisco Cruise Terminal, LLC of approximately 22,000 square feet of property located at the corner of Beale and Bryant Streets on Seawall Lot 330;

(d) Adopting findings authorizing the lifting of the public trust from approximately 22,000 square feet of property located at the corner of Beale and Bryant Streets on Seawall Lot 330, subject to approval by the State Lands Commission;

(e) Declaration of Policy regarding timing of construction of Brannan Street Wharf; and

This Print Covers Calendar Item No. 8B(1)&(2)

(f) Declaration of Policy regarding future development of the remainder of Seawall Lot 330.

DIRECTOR'S RECOMMENDATION: ADOPT CEQA FINDINGS, APPROVE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, PURCHASE AND SALE AGREEMENT, AND LEASE WITH SAN FRANCISCO CRUISE TERMINAL LLC, AND ADOPT POLICIES REGARDING BRANNAN STREET WHARF AND SEAWALL LOT 330.

I. PROJECT OBJECTIVES

Over the past twenty years, the Port has worked together with major stakeholders, environmental groups, the State Lands Commission, BCDC, and other City departments to create a vibrant northern waterfront for San Francisco. This effort led to the adoption in 1997 of the Port of San Francisco Waterfront Land Use Plan, and in 2000, Bay Conservation and Development Commission ("BCDC") to adopt amendments to BCDC's San Francisco Bay Plan and BCDC's San Waterfront Special Area Plan ("Special Area Plan") which reflected consistent plans for the San Francisco Waterfront.

The Waterfront Plan and the Special Area Plan represents the culmination of planning efforts for the improvement of the waterfront and harbor of San Francisco which date back to the first BCDC Special Area Plan for the San Francisco Waterfront in 1972 and the City's Northeast Waterfront Plan in 1975. The Waterfront Plan and the Special Area Plan recognize that the development of Pier 30-32 and the surrounding area within the South Beach/China Basin Subarea identified in the Waterfront Plan should further the trust purposes of increasing maritime activities and expanding public use.

This twenty year program of harbor improvement in the South Beach area of San Francisco has involved public investment of more than \$145 million in other trust related, recreation and public access improvements, including creation of approximately 13.5 acres of new open water area through the removal of Piers 10 through 22 between the Ferry Building and Pier 24, and nearly 90 acres of new waterfront public access, public area, open space, and other trust-related uses.

The centerpiece of these efforts is the development of the James R. Herman International Cruise Terminal and mixed use project at Piers 30-32 (collectively, the "Cruise Terminal Project") and the development of the adjacent Brannan Street Wharf as a major shore-side open space. The cruise terminal will provide a state-of-the-art facility to meet increased demand for cruise ships, enhance the Port's international reputation as a first class cruise destination, and preserve and create new maritime jobs on Piers 30-32 and throughout San Francisco's waterfront. The Cruise Terminal Project will add significant new public access and viewing areas integrated into the commercial development component. The Brannan Street Wharf will fulfill one of the main goals of the Special Area Plan by providing a world-class open space for the community, the City and visitors to San Francisco. Development of a portion of Seawall Lot 330 for residential condominiums ("Condo Project") will finance these objectives while complementing the adjacent residential uses. Together all of these Project components will create a signature mixed-use waterfront project which achieves a high level of year-round public use and support and achieve a use and design program which

respects and complements the existing South Beach neighborhood, uniting the City with its waterfront.

The Port intends to finalize a public-private partnership with San Francisco Cruise Terminal LLC¹("SFCT") for the development of this Project because of the significant costs of the seismic and structural upgrades to Piers 30-32, the cruise terminal facility, the Brannan Street Wharf, and other public access amenities. This partnership provides over \$114 million dollars of public improvements, including \$57 million for the Piers 30-32 seismic upgrade and pier improvements necessary to accommodate two new berths, \$42 million for the cruise terminal, and \$15 million for the Brannan Street Wharf.

II. SUMMARY OF THE TRANSACTION

The actions that are the subject of today's proposed Port Commission actions all relate to the Port's issuance in 1999 of a Request for Proposals for the Cruise Terminal Project and Seawall Lot ("SWL") 330, and the Port Commission's actions in 2000 that authorized Port staff to enter into exclusive negotiations with SFCT for the project.

Since that time, the parties have negotiated the Lease Disposition and Development Agreement ("LDDA"), Lease Agreement ("Lease"), Purchase and Sale Agreement ("Sale Agreement"), and associated exhibits and attachments that are presented to the Port Commission today for approval (collectively, the "Transaction Documents"). In addition, in 2001, the Port obtained State legislation that authorized the proposed development program at Piers 30-32. More recently, the City's Planning Commission certified a Final Supplemental Environmental Impact Report ("FSEIR") for the proposed project, and the Board of Supervisors has affirmed the FSEIR certification.

In brief, the transactions presented to you today contemplate a two phased project. Under the first phase governed by the Sale Agreement, the Port would sell the Condo Site to SFCT for construction of a condominium tower, and the Port would also participate in sales proceeds from individual condominium units. The parties anticipate that SFCT would complete the Condo Project by mid-2005. In the second phase, governed by the LDDA and Lease Agreement, once the Port obtained sufficient funds from the sale and development of the Condo Project, plus an additional \$6 Million in Port capital funds from its Special Area Plan fund, SFCT would construct the Brannan Street Wharf (anticipated to commence by the end of 2005). In addition, upon satisfaction of certain conditions precedent under the LDDA, the Port would deliver a 66-year Lease to SFCT for construction and operation of the Cruise Terminal Project. The LDDA would continue to govern SFCT's construction obligations, but would terminate upon completion of their initial improvements, while the Lease would continue for its 66 year term.

III. BACKGROUND

1 . The membership interest in SFCT is composed of the following: 50% Lend Lease Development (US) Inc., 21.25% PSA (USA) Inc., 21.25% Chinese Maritime Transport Ltd., and 7.5% Whitney Cressman LLC.

A. Selection Process

Based on an analysis of alternative sites for the James R. Herman International Cruise Terminal that was completed on September 2, 1998, the Port Commission approved Resolution 98-108 on October 27, 1998 authorizing staff to prepare a Request for Proposals for a new cruise terminal and mixed-use development at Piers 30-32 and SWL 330. On May 25, 1999, the Port Commission approved Resolution No. 99-36, authorizing Port staff to issue an Request for Qualifications/Proposals for the design and development of the Bryant Street Pier Project, including the James R. Herman Cruise Terminal, on Piers 30-32 and SWL 330.

On January 11, 2000, after an extensive review and evaluation of qualifications and proposals received, the Port Commission approved Resolution No. 00-03, authorizing Port staff to enter into exclusive negotiations with SFCT for the project. The Port and the SFCT signed an Exclusive Right to Negotiate ("ERN") on January 25, 2000. The ERN provided for an initial 9-month period of exclusive negotiations and provided option periods extending the term to October 24, 2001. The Port Commission subsequently approved extensions of the exclusive right through June 6, 2003.

B. History of the Negotiations

As originally proposed by SFCT, the Project included a two berth cruise terminal, commercial retail, office, parking and open space on Piers 30-32 and a 400 room hotel and 11 time share units on SWL 330. After conducting extensive due diligence, including physical and engineering investigations of Piers 30-32, SFCT determined that the cost of seismically retrofitting the pier exceeded their original estimates by more than \$40 million. In order to make the Cruise Terminal Project economically feasible, SFCT proposed increasing the amount of office space on Piers 30-32. In addition, in response to both community and market concerns, SFCT proposed developing SWL 330 with residential condominiums as an alternative to the hotel and time-share units.

SFCT and Port staff worked with the respective staffs of the State Lands Commission ("SLC"), BCDC, and the Attorney's General's Office to address public trust issues raised by the inclusion of general office and certain neighborhood-using, non-trust retail uses. In August, 2001, SLC staff informed the Port that the authorization of the use program would require action by the State Legislature.

In September 2001, the State Legislature passed legislation, known as AB 1389, sponsored by Assemblyman Kevin Shelley. The Governor signed AB 1389 in October 2001. Among other items, AB 1389: 1) allows 300,000 leasable square feet of office space on Piers 30-32 and allows an additional 25,000 square feet in the cruise terminal facility for no longer than 14 years, converting to trust use at that time or sooner if needed for cruise terminal expansion; and 2) allows a limited amount of non-trust retail (i.e., there must be a greater amount of trust-consistent retail and the ratio of trust to non-trust retail must be at least 40% of total office leasable space).

AB 1389 also accelerates the timing for the completion of the Brannan Street Wharf, as identified in the BCDC Special Area Plan. With review by BCDC, the Port must approve the

final design concept for the Brannan Street Wharf prior to the submittal of a major permit application to BCDC, encumber funds for the completion of the Brannan Street Wharf, place funds in a segregated account prior to issuance of a BCDC permit, construct the northern portion of the Brannan Street Wharf contemporaneously with the Piers 30-32 project, and remove Pier 36 and complete the Brannan Street Wharf no later than five years after the start of construction of the Piers 30-32 project.

Although AB 1389 resolved the use issues for Piers 30-32, the Port expressed a desire to retain ownership of as much of SWL 330 as possible. SFCT responded with a two-phased project that would allow for the sale and development of the Condo Site, with proceeds supporting the subsequent construction of the Cruise Terminal Project and the Brannan Street Wharf. To this end, SFCT and Port staff signed a Term Sheet in June 2002, which is the basis for the Sale Agreement, LDDA and Lease that are before the Port Commission today.

SFCT and Port staffs have continued worked with SLC staff to address public trust issues raised by the residential component on SWL 330. The parties have conceptually agreed on an approach that would use existing legislative authority to remove the public trust designation from a portion of SWL 330, and place the trust designation on another site of equal value. A proposed receiver site for the public trust is a portion of property owned by the Port adjacent to Pier 80, commonly known as the "Western Pacific Parcel," but does not include the parcel occupied by MUNI. Upon approval of the trust exchange by the SLC, the Port would be able to convey the Condo Site to SFCT for development of the Condo Project.

C. Design Development

SFCT has presented several iterations of the Project concept design to various community forums and regulatory agencies for review and comment. SFCT has reviewed the most recent concept design for Piers 30-32 with Port and BCDC staff, and presented this design to the joint Waterfront Design Advisory Committee/BCDC Design Review Board on December 9, 2002 and February 10, 2003. SFCT presented an initial concept design to the Rincon Point-South Beach Citizens Advisory Committee on February 24, 2003. SFCT has shown the initial concept design of the Condo Project to the Waterfront Design Advisory Committee ("WDAC") on March 12, 2003. SFCT will return to these bodies as necessary before it submits schematic plans to the Port Commission for its approval.

The Port has conducted three public workshops on the Brannan Street Wharf concept plan. The joint Waterfront Design Advisory Committee/BCDC Design Review Board has reviewed the concept plan on three occasions, most recently on December 9, 2002.

D. Next Steps

1. Approvals for Construction of Condo Project

Following approval of the resolutions before the Port Commission today, SFCT must obtain the following approvals before the Port will transfer the Condo Site for construction of the Condo Project.

Port Commission

- Approval of schematic designs for the Brannan Street Wharf, the Cruise Terminal Project and the Condo Project on SWL 330 and approval of Consolidated Plan for the entire SWL 330
- Approval of exchange of trust restrictions from the Condo Site to another site

Planning Commission/Planning Department

- Recommendation to the Board of Supervisors for approval of zoning map amendment for a height reclassification for a condo tower to a 220-foot height limit
- Determination of consistency of Planning Code 101.1
- Approval of off-street parking exemption at Piers 30-32
- Conditional use authorization for the residential use on SWL 330

Department of Building Inspection

- Issuance of a building permit or site permit for the Condo Project

Board of Supervisors

- Approval of sale of the Condo Site
- Approval of the financial terms of the Lease
- Adoption of Findings regarding consistency of SWL 330 residential component to Planning Code 101.1
- Approval of subdivision map for SWL 330 condos

State Lands Commission

- Approval of exchange of trust restrictions from Seawall 330 to another site.

BCDC

- Approval of a Major BCDC Permit for the Piers 30-32 component with issuance conditioned upon the encumbrance and placement of funds for the Brannan Street Wharf in a segregated account dedicated to construction of the Brannan Street Wharf

2. Approvals for Construction of Piers 30-32 Site and Brannan Street Wharf

The following additional approvals are required before the Lease of Piers 30-32 is delivered to SFCT and construction can commence on the Cruise Terminal Project:

BCDC

- Issuance of a Major BCDC Permit for the Cruise Terminal Project and the Brannan Street Wharf
- Approval of amendments to the Port for maintenance dredging permits

U.S. Army Corps of Engineers

- Authorization for construction of the Cruise Terminal Project and the Brannan Street Wharf pursuant to the Rivers and Harbors Act
- Approval of amendments to the Port's maintenance dredging permits

U.S. Customs/Immigration and Naturalization Service/U.S. Department of Agriculture

- Approval of cruise terminal design and security services

Other State Regulatory Agency Approvals, as required.

IV. PROJECT DESCRIPTION AND COSTS

A. Cruise Terminal Project on Piers 30 -32 Development

The Pier 30-32 program analyzed under the Preferred Alternative and proposed under the Current Project includes a partial reconfiguration and structural upgrade of the Pier 30-32 structure, upon which would be constructed a new cruise terminal, a series of retail and office buildings, 425 parking spaces, and accessory open spaces. A berthing area for boats would also be constructed adjacent to the pier. This development would include a collection of buildings of varying sizes constructed on the pier deck and oriented around a central lagoon. The elements of this component, as proposed under the Preferred Alternative, are as follows:

1. Cruise Terminal

Construction of the new James R. Herman International Cruise Terminal, a two-level, 100,000 gross square-foot (gsf) structure that would serve as San Francisco's main terminal servicing cruise ships calling at the Port. Approximately 20,000-50,000 gsf of the terminal's space would be available to the public for civic and special events during the off-season, when ships are not in port. The terminal, to be located at the northeastern corner of the pier, would be primarily 40 feet tall, with an unoccupied architectural element of the terminal roof rising to a height of approximately 88 feet. The terminal would be served by an approximately 850-foot long berth along the pier's northern edge and a 1,000-foot long berth along the pier's eastern edge (created by a 365-foot long and maximum 50-foot wide southern extension of the existing pier). Maintenance dredging would be required to provide adequate depth at the northern berth; the eastern berth would require minimal maintenance dredging. The berths and terminal would be designed to accommodate two cruise ships simultaneously.

Passengers and visitors to the terminal would enter on the first level via an atrium on the building's southern side, then take escalators to the second level for ticketing and boarding. The terminal's ground level would be devoted primarily to terminal operations and ship servicing, while the second level would function as the primary public space and would offer expansive views of the bay through floor-to-ceiling north and east facing windows.

The new cruise terminal would be expected to serve approximately 97 calls in 2010, and about 107 calls by the year 2020.

2. Retail/Entertainment

Approximately 195,000 gsf of retail/entertainment space would be situated throughout the pier, including a grocery store, restaurants, a multi-screen cinema and a variety of other retail spaces along either side of the pedestrian walkways and along the lagoon.

3. Commercial Office

A total of approximately 370,000 gsf (325,000 net square feet) of office space for maritime and other private business would be provided on the second and third levels of the buildings on the pier, including part of the terminal building. The buildings would be two and three stories in height, and the size and configuration of each of the floor plates would vary.

4. Parking and Circulation

The vehicular access entry/exit point for the pier would be from The Embarcadero at its intersection with Bryant Street. This entry/exit would provide access to the four (4) story, 425 space parking garage, which would be situated immediately on the right side after entry. Further along the access road would be a taxi drop off point and also coach parking. The road would end with a turning circle at the southern end of the terminal. A total of nine truck loading spaces would be provided.

5. Open Space/Public Access Amenities

The open space program for the pier would include plazas, terraces, aprons, and a lagoon. Landscaped terraces would be located on the second level, one to the south of the terminal near the eastern edge of the pier, one to the north of the terminal near the northern edge of the pier and one situated above the north end of the lagoon. Providing perimeter access to the entire pier would be 50-foot wide berthing aprons that would surround and extend beyond the terminal on the north and eastern sides. The aprons would generally be open to the public, but would be closed for safety purposes when ships are in port. A large lagoon would be created near the center of the pier, creating a focal point from which most pier buildings would be oriented and have access. An apron/walkway of approximately 30 feet in width would surround the lagoon. Berths will be provided for water taxis, recreational boats and possibly excursion vessels or ferries.

6. Red's Java House

The existing Red's Java House restaurant would remain at the northwest corner of Piers 30-32.

7. Pier Seismic and Structural Upgrade

Where required, the existing concrete piles would be repaired, which would involve the removal of marine growth and loose materials, installation of new reinforcing steel around the exterior of the pile, securing formwork around the pile, and then pumping of a cement-based grout (from a machine on the pier deck) into the formwork. Pieces of the pier deck would be removed to create the lagoon and to allow for the installation of new piles. New concrete piles would be driven for the pier extension. A new concrete deck would be installed atop the existing deck and on a timber and steel formwork for the pier extension. No net increase in the water area covered by pile-supported structures would occur.

B. Condo Project on SWL 330 - Residential Program

The Condo Site, as shown Attachment 1 hereto, would be sold to SFCT for development of the Condo Project. The Port would retain ownership of the balance of SWL 330 for future development. The Condo Project would include the construction of approximately 140

condominium units, with approximately 140 parking spaces, located in three levels above grade. Entry to the parking garage would remain on Beale Street. The main entry to the building would be on the first level. The building would be approximately 22 stories and 220 feet tall. The building would contain communal facilities, including a swimming pool, concierge and gym, with common open space at the podium level. In order to enhance the residential nature of the project and the pedestrian frontage, staff of the Planning Department has requested that the Condo Project be serviced by on-street loading, and that an off-street loading bay not be included in plans for the condo tower.

SFCT will undertake an interim perimeter landscaping plan for the balance of SWL 330. This will allow the lot to continue as a revenue-generating parking lot. SFCT will have the right to use a small portion of the balance of SWL 330 for construction staging (for which it will pay to the Port the then current market rental value per square foot). The Port will retain ownership of the balance of SWL 330 and retain all development rights. SFCT is obligated to prepare a Consolidated Plan for the entirety of SWL 330. Such plan will indicate building envelope, massing and height on the entire SWL 330 consistent with the certified FSEIR.

C. Brannan Street Wharf

As shown in Attachment 2, the Brannan Street Wharf would involve removal of Pier 36 (91,845 sq. ft.), located immediately to the south of Pier 30-32, removal or repair of portions of marginal wharf and construction of new pile supported wharf area to create the Brannan Street Wharf. The Brannan Street Wharf would be approximately 600 feet long (parallel to The Embarcadero) and 95 feet wide. As called for in the BCD's *San Francisco Waterfront Special Area Plan* (July, 2000) and the Port's Waterfront Plan (as amended July, 2000), the Brannan Street Wharf would be at least 57,000 square feet.

The Brannan Street Wharf would provide a major public open space that would reflect the character and needs of the adjacent South Beach neighborhood and provide access to the waterfront for residents and visitors to the area, establish a unique activity center, provide a respite from adjacent intensively developed areas, accommodate a variety of passive recreational activities, and serve as both a local and regional destination. Under the LDDA, SFCT would construct the Brannan Street Wharf.

D. Project Budget

The budget for each of the project components is estimated as follows:

Table A

	Estimated Project Cost (in millions)
Condo Tower	\$85.5
Piers 30-32	
Pier Upgrade	\$56.6
Office, Retail & Parking	\$147.5
Cruise Terminal	\$42.1

Subtotal	\$246.2
Brannan Street Wharf	<u>\$15.0</u>
Total	\$346.7

V. TRANSACTION DOCUMENTS

The agreements negotiated by SFCT and Port staff consist of the following:

- Purchase and Sale Agreement of the Condo Site on a portion of SWL 330 (Sale Agreement)
- Lease Disposition and Development Agreement for the Cruise Terminal Project on Piers 30-32 and the Brannan Street Wharf (LDDA)
- Lease of Piers 30-32 (Lease)
- Attachments (to the Sale Agreement and LDDA) and Exhibits (to the Lease), which documents pertain to the transaction and include: Legal Descriptions and Site Plans; the Scopes of Development; Schedules of Performance; Brannan Street Wharf Permit to Enter; Preliminary and Final Budgets; Cost Categories; Approved Pre-Development Costs; Forms of Guarantys; the Permitted Title Exceptions; Certificates of Completion; Prevailing Wages Provisions; Required Terms of Cruise Terminal Operating Agreement; Form of Guaranty; Mitigation and Improvement Measures; Equal Opportunity Programs; First Source Hiring Agreement; Form of Memorandum of LDDA; Form of Memorandum of Lease; Form of Non-Disturbance Agreement; Form of Lessor's Estoppel Certificate; Form of Termination Fee Guaranty; Payment and Performance Deed of Trust; Form of Reversion Grant Deed; and Insurance Requirements.

The Port will concurrently enter into a Sale Agreement for the Condo Site and the LDDA for the Piers 30-32 site and Brannan Street Wharf. The Sale Agreement will govern the purchase, sale and development of the Condo Site. The Sale Agreement indicates the conditions that must be met for the Port to deliver the Condo Site to SFCT, establishes the purchase price of the Condo site, sets procedures and requirements concerning the development of the Condo Project, and dictates how the proceeds from the sale of condominium units will be distributed between the Port, SFCT and the lender.

The LDDA addresses the scope of development, SFCT's obligations to obtain Project approvals, including approvals from the Port governing design and construction, the schedule of performance, the guaranty for those obligations, and the financing plan for construction of the Project and the Brannan Street Wharf, including the Port's funding obligations for the Brannan Street Wharf component and all necessary infrastructure. The Port will deliver the Lease to SFCT when the conditions to Lease delivery under the LDDA are satisfied. Upon SFCT's satisfactory completion of the Condo Project, the Cruise Terminal Project, and the Brannan Street Wharf, the LDDA will terminate. Thereafter, the Lease will govern all of the rights and obligations of the parties with respect to Piers 30-32. The Lease will expire 66 years following the commencement date.

Copies of the proposed Transaction Documents are on file with the Port Commission Secretary.

A. Sale Agreement for SWL 330 Condo Site

The material elements of the Sale Agreement for the Condo Site on SWL 330 are summarized as follows:

1. Conditions to Port's Delivery of Condo Site

Among other conditions specified in the Sale Agreement, the Port will not be obligated to delivery the Condo site until:

- SFCT has obtained issuance of a BCDC major permit for the Cruise Terminal Project 30-32 site or Port shall have obtained assurances from BCDC that SFCT has complied with all necessary requirements and the BCDC is prepared to issue a permit.
- Port Commission has approved schematic drawings for Piers 30-32 and the final design concept of the Brannan Street Wharf.
- Port Commission has reviewed the final construction drawings of the Condo Project.
- SFCT has obtained all regulatory approvals necessary to immediately commence construction for the Condo Project, including conditional use permit from the Planning Department, a Port Site Permit, establishment of the Condo Site as a separate legal parcel, and approval by City and the California Department of Real Estate of all documentation required to establish the condominium regime.
- The Condo Site has been released from the public trust and Burton Act through an exchange approved by the State Lands Commission.
- The Port has approved the final budget and pro forma for the Condo Project.
- The Port has approved the evidence of adequate financing based on the final budget.
- SFCT has provided a completion Guaranty from Bovis Lend Lease.
- SFCT has delivered into escrow the Land Value payment (described below), Promissory Note, Deed of Trust.
- SFCT has complied with the City's affordable housing ordinances, the Equal Opportunity Program and the First Source Hiring Agreement.
- SFCT has secured approval of the Lease from the Board of Supervisors and other City authorizations.

2. As-Is Condition

The Port will deliver the approximately 22,000 square foot Condo Site to SFCT free and clear of unpermitted liens and title encumbrances, but otherwise in its "as-is" condition. SFCT will be responsible for any environmental remediation.

3. Payment of Land Value

SFCT will pay \$9 million to the Port as an initial land value payment as a condition of close of escrow. SFCT will pay an additional deferred land payment totaling \$324,000 to the Port from the Condo Sales Proceeds. The Port is required to place these land payments in a segregated account to be paid towards partial funding of the Brannan Street Wharf.

4. Timing of Construction

Condo Tower construction is expected to commence in late 2003 or early 2004 and be completed in 2005. If close of escrow has not occurred within 18 months after the parties execute the Sale Agreement, the Port may terminate the transaction. If close of escrow does not occur due to a default on the part of SFCT, SFCT must pay a termination fee of \$1 million. If SFCT does not commence Condo Project construction within 60 days of site delivery and complete the construction within 27 months, the Port has a right of reverter to recover the Condo Site (subject to any existing permitted mortgages).

5. Distribution of Priority of Condo Sales Proceeds

Out of escrow upon sale of each Condo unit, SFCT shall pay the applicable condo sales proceeds in the following manner:

- a) Repayment of outstanding mortgage debt to lender;
- b) Payment of deferred land payment to Port;
- c) Payment to SFCT for its equity contribution;
- d) Payment to SFCT and Port in equal shares until SFCT achieves a 12.5% return (i.e., an internal rate of return of 12.5% on equity based on capped condo development costs);
- e) Payment to Port of all remaining amounts.

The deferred land payments to the Port will be placed into the segregated account to fund the Brannan Street Wharf, along with the initial \$9 million land payment. All other Residual Condo Sales Proceeds distributed to the Port will be placed in a separate segregated interest-bearing account. These Condo Sales Proceeds and accrued interest will be released to SFCT to offset costs to develop the Cruise Terminal Project. The amount of potential Residual Condo Sales Proceeds to the Port is projected at \$20.4 million as shown in VII. Financial Analysis below.

6. Security for Payment/Guaranty

SFCT will be obligated to pay Port for the deferred land value as evidenced by a \$324,000 Promissory Note which will be secured by a Deed of Trust. The Deed of Trust will also secure SFCT's obligation to pay the Port the Residual Condo Sales Proceeds. The Port Deed of Trust contains provisions for release of each condo unit upon payment of amounts owing to the Port from the applicable portion of condo sales proceeds. The Port Deed of Trust will be subordinate to the rights of any first mortgage lender permitted under the Sale Agreement for purposes of constructing or improving the Condo Project; provided, however, that any such lender will be required to recognize the Port's rights granted under the Sale Agreement in accordance with the terms thereof.

Bovis Lend Lease, Inc., an affiliate of Lend Lease Capital and Real Estate Services, (one of the members of SFCT), a company having a net worth of at least \$125 Million, will guaranty the lien free completion of the Condo Project. If the Guarantor defaults under the Guaranty, the Port's damages incurred in recovering the property and/or completing the project will be offset by amounts recovered by Port from the sale of the Condo Site and/or Condo Project. If Port does not sell the Condo Site and/or Condo Project, or elects to complete a project other than the Condo Project, the Port's damages will be offset by an amount based on the "fair

market value" of the Condo Project as though it had been completed within 24 months following Port's acquisition of the Site.

7. Right of Reverter

If SFCT does not commence Condo Project construction within 60 days of site delivery and complete within 27 months after start of construction, the Port has a right of reverter to recover the Condo Site.

8. Consolidated Plan for SWL 330

SFCT will prepare a Consolidated Plan for the entire of SWL 330, including the Condo Site. This plan will indicate appropriate building envelope, massing and height on the entire SWL 330, as defined in the SEIR. SFCT will not have rights to develop the remaining portion of SWL 330. The Port will retain the site and potential future uses will be consistent with the Waterfront Plan. If residential use is contemplated, then public trust restrictions will need to be resolved.

9. Deed Restrictions

SFCT will include as a deed restriction the requirement that condo buyers waive rights relating to initiating lawsuits arising out of the Cruise Terminal Project, as such development is consistent with the LDDA, and adjacent SWL property as such development is consistent with the Consolidated Plan.

10. Indemnity

SFCT will indemnify the Port substantially in accordance with the Port's standard indemnity provisions.

11. City Requirements

SFCT will comply with all applicable City requirements, including non-discrimination, equal benefits, equal opportunity program, and prevailing wages.

B. LDDA for Piers 30-32 and Brannan Street Wharf

The basic provisions of the LDDA for the Cruise Terminal Project on Piers 30-32 and Brannan Street Wharf are summarized below.

1. Pre-Construction Activities

The Port may enter into interim leases or licenses for Piers 30-32 so long as they do not adversely impact SFCT's ability to construct the Cruise Terminal Project. Port will collect and retain all revenue generated from such leases and licenses and will be responsible for all associated costs and liabilities.

2. Conditions to Port's Delivery of Piers 30-32 Site

The Piers 30-32 Site will not be delivered to SFCT until the following conditions are met:

- Port has approved submittal of the final budget and corresponding construction contract for Piers 30-32.
- Port has approved SFCT's evidence of adequate financing to undertake the development based on the final budget.
- SFCT has obtained a Port Site Permit from the Port building department, necessary to construct the Cruise Terminal Project.
- Port has issued a Site Permit necessary to commence construction on the Brannan Street Wharf.
- SFCT has obtained all other regulatory approvals necessary to commence construction of Piers 30-32 and Brannan Street Wharf.
- SFCT has provided a satisfactory Completion Guaranty guaranteeing the completion of Piers 30-32 and Brannan Street Wharf.
- Port has approved the Cruise Terminal Operation Agreement with PSA (USA) or other cruise terminal operator acceptable to Port.
- Port has reviewed and approved the Schematic Drawings and the Final Design for Piers 30-32, including review of the proposed Cruise Terminal design and operations plan will meet applicable federal requirements.
- Port has entered into the necessary agreement and funds for construction of the Brannan Street Wharf, as required by AB 1389.

3. As-Is Condition

The Port will deliver the Piers 30-32 Site to SFCT free and clear of unpermitted liens and title encumbrances, but otherwise in its "as-is" condition.

4. Timing of Construction of the Cruise Terminal Project

SFCT will commence construction on the Cruise Terminal Project within 60 days after delivery of the Lease to SFCT, but no later than June 30, 2006. These components will be completed within 3 years thereafter. As long as SFCT is not in default under the LDDA and/or Sale Agreement, SFCT shall have 2 one-year options to extend the time of commencement for these components, subject to payment of \$150,000 for each one-year option. These option payments will be non-refundable, but will be credited towards Base Rent (described below). Subject to valid exercise of these options, if close of escrow has not occurred by June 30, 2008 or the Port may terminate the LDDA and avail itself of all available remedies if SFCT has not completed all construction within 3 years of delivery.

5. Brannan Street Wharf

The Port will be responsible for obtaining conceptual design approval for the Brannan Street Wharf from the Port Commission and BCDC, and for completing Schematic design for the Brannan Street Wharf. SFCT will be responsible for preparing all other engineering and construction documents, obtaining all regulatory approvals, and performing all demolition and construction necessary to complete the Brannan Street Wharf. Once the Port and received full funding for the Brannan Street Wharf and obtained required permits,

construction will commence. Based on cost estimates prepared by the Port and SFCT, the projected cost of the Brannan Street Wharf is \$15 million.

As stated above, the Port will deposit in a segregated interest-bearing account, the initial land value payment of \$9 million immediately upon close of escrow for the Condo Site, as well as deferred land payments as they are received. The Port will also contribute in annual installments an additional \$6 million for the Brannan Street Wharf to fulfill its obligations under the BCDC Special Area Plan ("SAP"). Attachment 3 shows the funding schedule for SAP projects, including the Brannan Street Wharf.

The SAP states that the Brannan Street Wharf be built within 15 years after completion of the Piers 30-32 cruise terminal project. AB 1389 accelerated the Brannan Street Wharf so that Phase 1 would be built at the same time as the Cruise Terminal project and Phase 2 would be built within 5 years of completion of the Cruise Terminal Project. However, full funding of the Brannan Street Wharf is projected to be achieved by September 30, 2005. Once funding is complete and permits are secured, SFCT will proceed with construction. Completion of the Brannan Street Wharf should be accomplished in about a year. This significantly accelerates the timeframe required under AB 1389.

SFCT will be responsible for all amounts in excess of \$15 million necessary to complete the Brannan Street Wharf. Any cost overruns will be funded by SFCT, but excess amount will be included as the Final Piers 30-32 costs for purposes of calculating the Port's Participation Rent and Participation in Sales Proceeds and Refinancings under the Lease.

The lease premises will not include the Brannan Street Wharf. The Port will be responsible for Brannan Street Wharf maintenance and repair at the Port's sole cost and expense following completion of construction.

6. Insurance

SFCT will be required to carry a comprehensive package of insurance on the site which has been approved by the City's Risk Manager.

7. Indemnity/Insurance

SFCT will indemnify the Port substantially in accordance with the Port's standard indemnification language. SFCT is required to carry a comprehensive package of insurance for both construction and operation of the Cruise Terminal Project, and construction of the Brannan Street Wharf, as approved by the City's Risk Manager.

8. City Requirements

SFCT will comply with all City requirements, including non-discrimination, equal benefits, first source hiring, equal opportunity program, and prevailing wages.

C. Lease for Piers 30-32

Upon close of escrow under the LDDA, the Port will deliver the Lease for the Piers 30-32 site to SFCT. The basic provisions are summarized below:

1. Term

The term of the Lease is 66 years commencing upon close of escrow for the Piers 30-32 site.

2. Site

As shown on Attachment 4, the site will include Piers 30-32 (Parcel A) and the berthing areas for cruise ships (Parcel B), and berthing areas for boats including water taxis and pleasure craft (Parcel C).

3. Uses

The uses will be consistent with the Scope of Development (substantially as described in set forth in the Project Description and AB 1389 described above).

4. Financial Terms

The financial terms of the lease are summarized below. The summary of Port returns is described in VI. Financial Analysis:

- Construction Period Rent: Annual rent of \$150,000 (2003 dollars).
- Base Rent: Annual rent of \$850,000 (2003 dollars) which will be CPI adjusted every 5 years.
- Participation Rent. Following the third year of operation, SFCT will pay Participation Rent to the Port which will be in addition to the Base Rent, as described below.
 - a) Prior to First Sale or 7th Anniversary of Lease: Starting on the third anniversary of operations and until the date of the first sale or seventh lease year, Participation Rent will be calculated quarterly by first deducting SFCT's quarterly preferred return equaling 3% of Final Piers 30-32 Costs from quarterly Net Operating Income (NOI), and then multiplying the remainder by 25%. Final Piers 30-32 Costs will include the cost of the Brannan Street Wharf and will constitute the lesser of (1) the Capped Piers 30-32 Costs, less the Port's contributions to the Cruise Terminal Project and Brannan Street Wharf, or (2) the actual Certified Piers 30-32 costs, less the Port's contributions.
 - b) After First Sale: After the first sale, Participation Rent will be calculated quarterly by first deducting a reduced preferred return equaling 2 ½ % of adjusted basis (defined as net sales proceeds) from quarterly NOI, and then multiplying the remainder by 25%.
 - c) After 7th Anniversary Date: In the event a First Sale had not occurred by the 7th anniversary date, Participation Rent will be calculated quarterly by first deducting

a reduced preferred return equaling 2 ½% of Final Piers 30-32 Costs (defined above) from quarterly NOI, and then multiplying the remainder by 25%.

- d) Sale of Cruise Terminal: If a sale of only the cruise terminal facility occurs, rent will be calculated quarterly separately from Participation Rent of the commercial components of Piers 30-32. Cruise Terminal Participation Rent will be calculated by subtracting \$500,000 from the quarterly NOI and then multiplying the remainder by 5%.

Participation Rent will be reconciled on an annual basis.

- Participation in Net Sale Proceeds. The Port will participate in Net Sale Proceeds from each sale of the leasehold throughout the term as indicated below:
 - a) First Sale Occurring within First Seven Years of Lease Term: Participation will be calculated on the Net Sales Proceeds less the Final Piers 30-32 Costs less SFCT's return from the sale (25% IRR on equity) multiplied by 40%.
 - b) First Sale Occurring after First Seven Years of Lease Term: Port's participation will be calculated on the Net Sales Proceeds less only Final Piers 30-32 Costs, and then multiplied by 15%.
 - c) All Subsequent Sales: Port's participation will be calculated as the Net Sales Proceeds less Adjusted Basis (purchase price of the seller) and then multiplied by 15%.

Net Sales Proceeds will equal total consideration from the sale of the leasehold less the transaction costs.

- Participation in Net Refinancing: Port's participation will be calculated as 15% of certain Net Refinancing Proceeds.

5. Maintenance and Repairs

SFCT will be responsible for all maintenance and repairs for Piers 30-32, specifically including pier structure, substructure, and public access. The Lease will require a periodic inspection and reporting obligation by SFCT and will require a separate reserve account for the pier structure and substructure maintenance and repairs.

SFCT will be responsible for the first 50 years for all substructure repair and maintenance work and be required to set aside a "sinking fund" of reserves, adjusted during the term to provide satisfactory level of maintenance.

From Years 50-66, SFCT will be responsible for substructure repairs, but if there are insufficient sinking funds, then the cost of the substructure repair may be amortized against ½ of annual Base Rent. If the costs exceed what can be so amortized, SFCT will be allowed to consider the excess to be cost to be an operating expense (reducing potential Port Participation Rent), or SFCT, at its option, may terminate the Lease.

6. Cruise Terminal Operations

- SFCT will manage terminal operator, stevedore company, and event coordinator throughout the lease term, subject to Port's reasonable approval.
- The initial cruise terminal operator will be PSA (USA), Inc. or other operator as approved by the Port. The initial term will be 10 years.
- The Operation Agreement will include performance, maintenance, security and operations standards for the cruise terminal consistent with a first-class international cruise terminal.
- The Operator will obtain the Port's consent to the form of berthing agreement and will obtain the Port's consent to berthing assignments.
- Port will perform all maintenance dredging. SFCT will pay for the initial maintenance dredging. Port will pay for subsequent maintenance dredging during the Lease term.
- If after the first 20 years of the lease term, SFCT determines that cruise terminal operations are not economically feasible, then SFCT may discontinue terminal operations. However, in such event, the Port, at its option, can require that SFCT transfer the cruise terminal to the Port or allow SFCT to use the cruise terminal for other uses permitted under the Lease.
- The Operation Agreement will require the Operator to manage, invoice and collect all dockage, passenger fees and other charges associated with the Cruise Terminal operations which will be retained by the Operator.
- During the first 30 years of the Lease term, the Port will not develop other cruise terminals without SFCT's consent. If within the first 30 years certain conditions set forth in the Lease occur which warrant development of another cruise terminal, SFCT will have the first right to develop another cruise terminal. If SFCT does not exercise this right, then SFCT can not unreasonably withhold its consent to the Port's development of another cruise terminal.
- SFCT may manage berths used at other Port facilities for overflow cruise berthing, excluding any new cruise terminal, throughout the term of the Lease. SFCT will pay Port dockage and wharfage from such other operations to defray costs of maintaining these facilities.
- SFCT must comply with all applicable mitigation measures adopted by the Port Commission pursuant to the FSEIR. Without limiting its compliance with all of the applicable mitigation measures, SFCT must require the Cruise Terminal Operator to include in all of its berthing agreements, a requirement for cruise ships to comply with mitigation measures D.1. (prohibition of wastewater discharge), D.2 (prohibition of ballast water discharges), and E.3 (requiring cruise ships to comply

with recommendations of the air quality advisory group regarding air emissions and incentive programs to reduce air emissions that are adopted by the Port Commission).

VI. FINANCIAL ANALYSIS

A. Financial Returns to the Port

SFCT will pay the Port the fair market land value of \$9,324,000 for the Condo Site. As shown on Attachment 5, the City's Director of Real Estate has confirmed that the appraised value is the fair market value of the Condo Site. A \$9 million down payment will be delivered to the Port at close of escrow with the remaining \$324,000 being paid out of proceeds from the sales of condominiums. These land payments will be placed in a segregated escrow account. The remaining \$6 million will be funded by the Port to finance the \$15 million Brannan Street Wharf. When funding is available and permits are secured, SFCT will proceed with the Brannan Street Wharf by late 2005. Construction should be completed in a year (or by late 2006).

Proceeds from the sale by SFCT of condominium units will be distributed to SFCT and the Port, with the Port receiving the majority of the Condo Project profits (estimated at approximately \$20.4 million). These condo sale proceeds will be held by the Port in a segregated account and will be paid to SFCT for funding the Cruise Terminal Project. SFCT will not receive a profit on these Residual Condo Sales Proceeds, but by reducing the costs of the Cruise Terminal Project, SFCT's profit potential from the Cruise Terminal Project will be enhanced. The potential profit from the development of the Cruise Terminal Project far exceeds the potential profit to SFCT from the Condo Project.

The financial benefits that the Port will receive from the development of the Cruise Terminal Project are as follows:

- The Port will be the beneficiary of \$114 Million of privately financed public improvements.
- The Port will receive guaranteed Base Rent equivalent to its current revenue from Piers 30-32, taking into account the cost of future maintenance dredging to be funded by the Port. The Construction Period Rent of \$150,000 (which will be adjusted for inflation) approximates the current rental revenues Port receives from Piers 30-32. The initial Base Rent of \$850,000 (which also will be adjusted for inflation) approximates the current rental revenue that the Port receives from Piers 30-32 plus the estimated future cost of maintenance dredging of the cruise terminal berths at Piers 30-32.
- The Port will participate in the financial success of the Cruise Terminal Project, through Participation Rent and Participation in Sales Proceeds, as well as Refinancing Proceeds.

Economic Planning Systems, Inc., the Port's real estate and financial consultant, has evaluated the proposed Project and has projected the potential returns to the Port through 2020, which are summarized in Table B below. This analysis considered a Base Case, plus two Alternatives.

Table B: Total Port Returns through 2020 (in millions)

	<u>Base Case</u>	<u>Reduced Condo Sales</u>	<u>Increased Office Rents</u>
<u>Rent to Port</u>			
Construction Period	\$0.7	\$0.7	\$0.7
Base Rent	\$13.7	\$13.7	\$13.7
Participation Rent	\$9.4	\$9.4	\$10.1
Total Rent	\$23.8	\$23.8	\$24.5
<u>Sales Proceeds to Port</u>			
Land Price @COE	\$ 9.0	\$9.0	\$9.0
Deferred Land Sale	\$0.3	\$0.3	\$0.3
Condo Sales	\$20.4	\$8.4	\$20.4
Subtotal	\$29.7	\$17.7	\$29.7
Pier 30-32	\$14.2	\$14.2	\$22.1
Total Sales Proceeds	\$43.9	\$31.9	\$51.8

1. Base Case

The Base Case of Port Returns is shown in Attachment 6. The Base Case assumes two key factors: a) continuing strength in waterfront condo sales prices, and b) improvement in office market demand.

The Base Case assumes construction of 137 condo units sold for an average price of \$755 per square foot. Market analysis has indicated that this proposed pricing scheme is reasonable because of the Condo Project's superior waterfront location. Given the range of the number of units under the Base Case, the Port should receive \$0.3 million in deferred land payments, plus an additional \$20.4 million from the sale of residual condominium units. This would be in addition to the initial land sales payment of \$9.0 million.

The Base Case assumes a rent of \$43 NNN (2003 dollars) per square foot. In the Base Case scenario, the Port would receive the annual Base Rent of \$850,000 (adjusting for inflation). Participation Rent would begin in 2012. By 2020, the Base and Participation Rent is estimated to be \$3.4 million. If a sale occurs in 2020, the Port's participation in Net Sales Proceeds is projected to be \$14.2 million.

Ultimately, the timing of the Piers 30-32 component is dependent on the need for new office space. Port staff has reviewed office market forecasts provided by SFCT and other literature regarding San Francisco real estate market forecasts. Based on these forecasts, Port staff agrees with SFCT that the demand for new office should be adequate within the 2006 to 2008 period to make the development of Cruise Terminal Project feasible.

2. Reduced Condo Sales Alternative

There is a risk that that prevailing condominium values may decrease when the condos are available for sale in 2005. In the event that there is a 15% decrease in condo sales resulting in an average sales price of \$645 per square foot, the Port would receive approximately \$8.7 million (in addition to the \$9.0 million from the initial land sale). Even if this reduced condo

sales scenario were to occur, SFCT has demonstrated to Port staff that it could still proceed with the Cruise Terminal Project and achieve reasonable returns if there is demand for office space.

3. Increased Office Rents Alternative

Port staff believes that there is potential for office rents to increase from \$33 NNN per square foot assumed in the Base Case to \$50 NNN (2003 dollars) per square foot by the time the Project is available for lease. In this increased office rent scenario, the Port could participate in a First Sale in 2010 and receive \$6.4 million. The combined Base and Participation Rent to the Port in 2020 would be \$3.6 million. If a subsequent Sale occurs in 2020, then the Port would participate and receive an additional \$15.7 million in net sale proceeds.

B. Financial Benefits from the Cruise Terminal

While the direct financial impact of cruise ship calls on Port Participation Rent is modest, there is a tremendous indirect effect of cruise ship calls to San Francisco. Cruise ship calls have dramatically increased from 2002 (42 calls) to 2003 (74 calls) and 2004 (possibly 85 calls). Port staff assumes a slow and modest increase in cruise calls after 2005, but it is possible that the number of cruise calls may remain steady or even decrease because of the uncertain political and economic climates and tourism patterns. Nevertheless, Port staff believes that at the time of completion of the James R. Herman International Cruise Terminal possibly in 2009 there will be approximately 95 cruise calls.

A significant factor is that the type of cruise ship calls may change. Currently, more than half the cruise ships calls at San Francisco are "positioning" or "transit calls," where vessels visit the Port en route to or from Alaska, Mexico or as part of a world cruise. Some passengers may disembark or embark at San Francisco, but many arrive and sail with the vessel, going ashore for only sightseeing or shopping. With the new Cruise Terminal being completed, Port staff believes that the vast majority of the cruise ship calls would involve homeported cruise ships. With homeported cruise ships, passengers would start and end their trip in San Francisco, thereby creating a sizable boost in the City's tourism industry. The cruise operations would become more cost-effective, create further dry-dock opportunities and boost the number of maritime and union jobs. In addition to the direct economic impact to the Port, there would be significant rewards to the City and County of San Francisco with respect to revenue and jobs.

The Port commissioned a study entitled "The Economic Impacts of the Port of San Francisco" in January 2000. In that study, the total economic impact to the City and County of San Francisco and the region from the cruise terminal which assumed only 46 cruise ship calls, was estimated at \$18.8 million in wages, taxes and local purchases of goods and services. Based on the current number of cruise ship calls, the impact is now estimated at over \$30 million for 2003.

VII. CEQA

The Major Environmental Analysis Division of the San Francisco Planning Department completed the environmental review of the proposed Project, including the Brannan Street

Wharf, under the California Environmental Quality Act (CEQA). The Supplementary Environmental Impact Report (SEIR) was published in November 2001 and was certified by the Planning Commission in May 2002. Bluewater Network filed an appeal to the Board of Supervisors, and the Board remanded the SEIR to the Planning Department. The SEIR was revised and certified by the Planning Commission in November 2002. San Franciscans for a Healthy Waterfront filed another appeal, and the Board rejected that appeal thereby certifying the SEIR in January 2003.

Before the Port Commission can approve any agreements with SFCT, it must consider the revised Final SEIR and relevant portions of the Waterfront Plan Final EIR, and adopt the CEQA Findings including implementation of a Mitigation Monitoring and Reporting Program, as shown in Attachment 2 thereto. The CEQA Findings discuss the significant environmental impacts of the proposed Project that, with mitigation, will be reduced to a level of insignificance and identifies unavoidable significant environmental impacts. The Findings also include a Statement of Overriding Considerations that specific economic, legal, social and other benefits outweigh the identified significant effects on the environment.

Of particular note, the CEQA findings include mitigation measures designed to address cruise terminal environmental impacts. These include the following measures designed to address water and air quality impacts:

- prohibit cruise ships using the Piers 30-32 cruise terminal from releasing incidental or intentional discharges to San Francisco Bay until such time as new wastewater treatment methods that adequately meet water quality standards are authorized by state or federal agencies specifically empowered by statute to make such authorization. The prohibition would be achieved by initiating and maintaining a program that would include, at a minimum: compliance with existing or future laws and regulations, working with government agencies to ensure compliance with the program; implementing a reporting mechanism between the cruise ship line and cruise terminal operator that would include monitoring and, where necessary, sampling; reporting by the cruise ship terminal operator to the U.S. Coast Guard ("Coast Guard") and the San Francisco Bay Regional Water Quality Control Board ("RWQCB") all incidental or intentional discharges to the Bay; establishing a mechanism and contract provision whereby the Port retains the right to deny berth access for violations of the prohibition or repeated unauthorized wastewater discharges; and establishing a water quality advisory group, which would include representatives of the cruise lines, Coast Guard, RWQCB, the Port, SFCT, the cruise terminal operator, the San Francisco Bar Pilots, at least one environmental organization whose primary stated purpose is to address San Francisco Bay water quality issues, and the Rincon Point-South Beach Citizens Advisory Committee to address cruise ship discharge issues. This advisory group would make recommendations to the Port Commission for the implementation and/or enforcement of measures to prohibit discharges into San Francisco Bay.
- prohibit cruise ships using the proposed cruise ship terminal from releasing ballast water discharges into San Francisco Bay until such time as ballast water treatment is specifically authorized by a state or federal agency specifically empowered by statute to make such authorization. The prohibition shall be achieved by initiating and maintaining a program, which would include, at a minimum: review by the project sponsors of cruise

lines' processes with relation to ballast water management; implementation of a reporting mechanism between the cruise ship line and the cruise terminal operator that would include monitoring; reporting by the cruise terminal operator to the Coast Guard and the California State Lands Commission staff of all incidental or intentional discharges; establishing a mechanism and contract provision whereby the Port retains the right to deny berth access for violations of the prohibition or repeated/habitual offenders of the State ballast water law; and establishing the water quality advisory group described above, which group also would review and make recommendations on the components of the ballast water program in this measure to the Port Commission and would review, evaluate and make recommendations regarding new technologies for treating ballast water when such technologies are approved by the appropriate agencies.

- Establish an emission reduction program that identifies specific air emissions criteria for cruise ships and includes incentives and other means that will reduce the air quality impacts of cruise ships using the Piers 30-32 terminal. The project sponsors would establish an air quality advisory group to the Port Commission with the purpose of establishing specific reduction criteria and corresponding incentives to reward cruise lines that meet or exceed the emissions reduction criteria. This group would include representatives from the cruise industry, Bay Area Air Quality Management District, the Port, SFCT, the San Francisco Bar Pilots, the cruise terminal operator, the Rincon Point-South Beach Citizen's Advisory Committee, a local area public health organization, and at least one environmental organization whose primary stated purpose is to address issues pertaining to air quality in the Bay Area. This advisory group would make recommendations to the Port Commission to establish incentives that reduce air pollution emissions. The advisory group will also review and make recommendations regarding measures to address air quality impacts. Following consultation with the working group, the Port will adopt an incentive program (involving reduced fees for ships meeting or exceeding emissions reduction criteria) prior to the commencement of cruise ship operations at Pier 30-32.

VIII. OTHER PORT ACTIONS

A. Adoption of Findings under Chapter 310

In 1987, the Legislature adopted Chapter 310, Stats. 1987 ("Ch. 310") declaring Seawall Lots 331, 332, and 333, to be free from the public trust, but requiring those Seawall Lots to continue to be subject to all the terms and conditions of the Burton Act except for the restrictions on use. Section 5 of Ch. 310 also authorized the City to exchange certain Port property found unnecessary for public trust purposes for lands of equal or greater value that are useful for trust purposes, subject to approval by the State Lands Commission. As described above, the Port proposes exchanging the trust off the Condo Site, and on to a portion of the Western Pacific parcel of equal value.

Pursuant to Ch. 310, the exchange would be reviewed and approved by the State Lands Commission. The Port would enter into a legally binding agreement with, and to be approved by, the State Lands Commission and the Port Commission, setting forth the conditions and procedure for accomplishing the trust exchange. Upon making the requisite findings required by law, the State Lands Commission would adopt a resolution of approval allowing the Condo Site to be free from the Trust. The Agreement would require all funds

received by Port from use of SWL 330, whether by sale, lease or other disposition, to be deposited in the Port's harbor fund for uses consistent with the Burton Act.

Chapter 310 requires the Port Commission to make certain findings in order to authorize a trust exchange. The attached Resolution includes these findings with regard to the Condo Site. The findings are as follows: (a) the Condo Site has been filled and reclaimed; (b) the Condo Site is cut off from access to the waters of San Francisco Bay, (c) the Condo Site constitutes a relatively small portion of the granted tide and submerged lands (d) the Condo Site is no longer needed or required for the promotion of the public trust for commerce, navigation and fisheries or the statutory trust; and (e) no substantial interference with the trust uses and purposes will ensue. Factual support for these findings are contained in the attached Resolution and elsewhere in the record.

B. Adoption of Policy Accelerating Construction of Brannan Street Wharf

The BCDC Special Area Plan stipulates that the Brannan Street Wharf, a major waterfront park in the area of Piers 34 and 36, would serve the South Beach neighborhood, San Francisco and the region. The Special Area Plan stated that upon Port's issuance of a certificate of occupancy for a cruise terminal project, the Port is obligated to: 1) construct the northern portion of the Brannan Street Wharf in the area of the since removed Pier 34 within 5 years; 2) remove Pier 36 within 15 years; and 3) complete the Brannan Street Wharf within 15 years if necessary grants or other funding is available or within 20 years if grants are not available.

AB 1389 accelerated the construction timing such that the Port is required to fund and complete the Brannan Street Wharf with the following time frame: 1) construct the northern portion of the Brannan Street Wharf in the area of the since removed Pier 34 contemporaneously with the construction of the cruise terminal, and 2) remove Pier 36 and complete the Brannan Street Wharf no later than 5 years after commencement of construction of the cruise terminal.

Approval of the agreements described in this staff report would allow the Port to convey a portion of SWL 330 to SFCT, and use these land proceeds and Port budgeted funds to finance the Brannan Street Wharf. Because full funding is scheduled to be complete by September 30, 2005, the Port has the opportunity to adopt a policy to further accelerate the Brannan Street Wharf because of the recognition that this project will be an important public amenity to the community. Adoption of such policy would allow the construction of the Brannan Street Wharf to proceed and would not link it to development of the Cruise Terminal Project.

C. Adoption of Policy Regarding Height of Development on Remainder of SWL 330

The FSEIR evaluated potential development which includes a proposed 220 foot high Condo Project on the western portion of SWL 330 (referred to as the Condo Site above) and set a height for the residual portion. As described in the Preferred Building Height Alternative, the southeast tower would have a 105 foot height limit, the northwest tower would have a 130 foot height limit, the Beale Street frontage would have a 60 foot height limit, the Embarcadero frontage would have a 25 foot height limit, and Bryant Street frontage would

have a 50 foot height limit, except for the easternmost two units which would have a 40 foot height limit.

In recognition that the Port will receive condo proceeds from the Condo Project and that maximization of those proceeds will benefit the Piers 30-32 cruise terminal project, the establishment of this Port policy is needed to express the Commission's intent regarding development on the remainder of the Seawall Lot and to ensure appropriate public outreach and consultation with SFCT, the Rincon Point-South Beach Citizen's Advisory Committee, the Waterfront Design Advisory Committee and other interested member of the public prior to approving any new development on the remainder of SWL 330.

IX. RECOMMENDATION

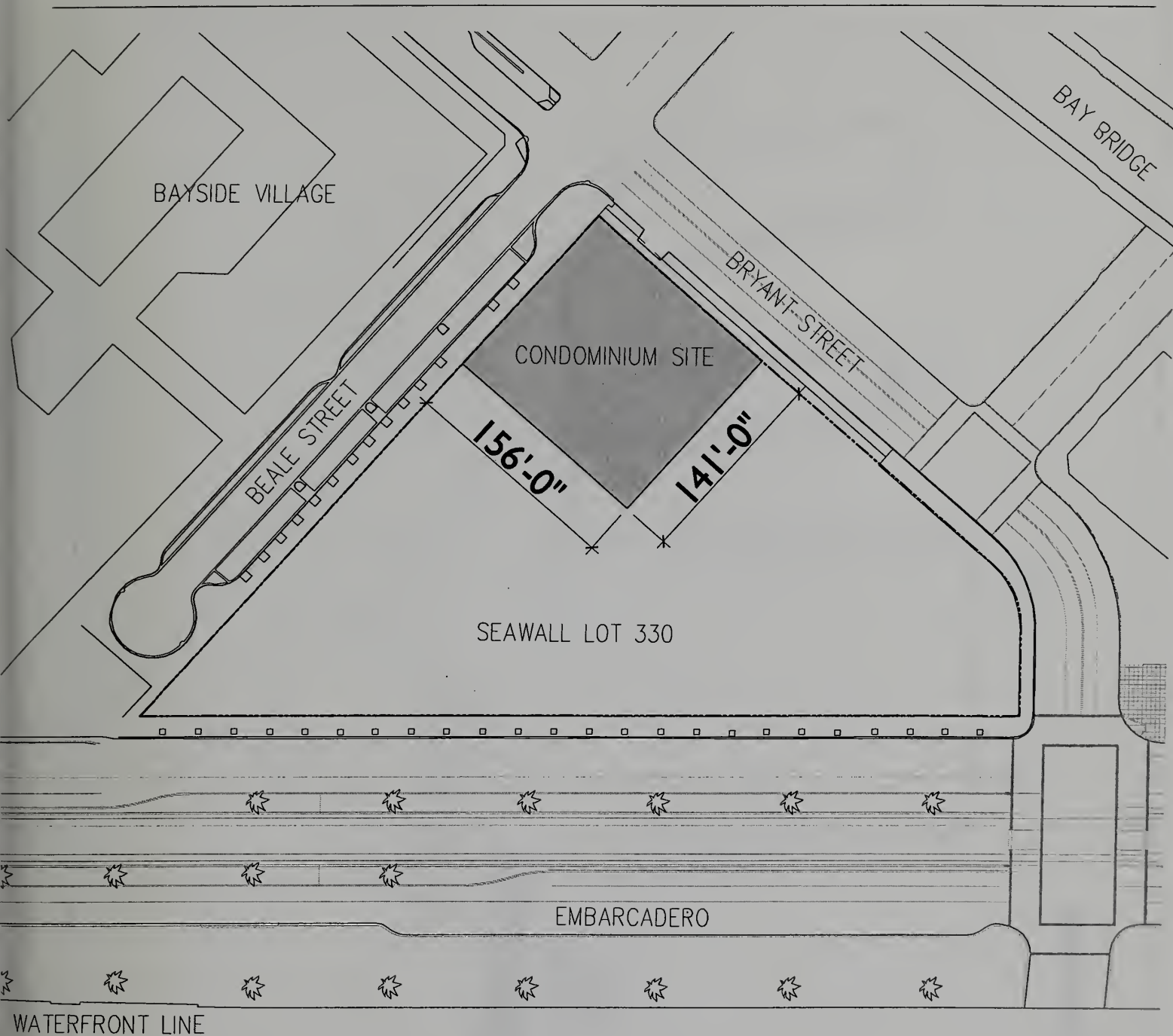
Port staff recommends that the Port Commission take the following actions:

1. Adoption of the CEQA Findings including implementation of a Mitigation Monitoring and Reporting Program;
2. Approval of the Purchase and Sale Agreement for a portion of SWL 330, including its Attachments;
3. Approval of the Lease Disposition and Development Agreement (LDDA) for Piers 30-32 and the Brannan Street Wharf, including its Attachments;
4. Approval of the Lease for Piers 30-32, including Attachments.
5. Adoption of Findings Regarding Chapter 310 Trust Exchange;
6. Adopt Declaration of Policy regarding timing of construction of Brannan Street Wharf; and
7. Adopt Declaration of Policy regarding future development of the remainder of Seawall Lot 330.

Prepared by: John Doll, Project Manager

Attachments to Staff Report

1. Condo Site on SWL 330 Site Plan
2. Brannan Street Wharf Site Plan
3. Special Area Plan Funding Schedule
4. Piers 30-32 Site Plan
5. Letter from Department of Real Estate re: Appraisal
6. Summary of Port Returns



CONTEXT PLAN

SCALE: 1" = 100'



MOORE RUBLE YUDELL
DESIGN ARCHITECTS

FISHER FRIEDMAN ASSOCIATES
EXECUTIVE ARCHITECTS

MRY Proj. No.: 286

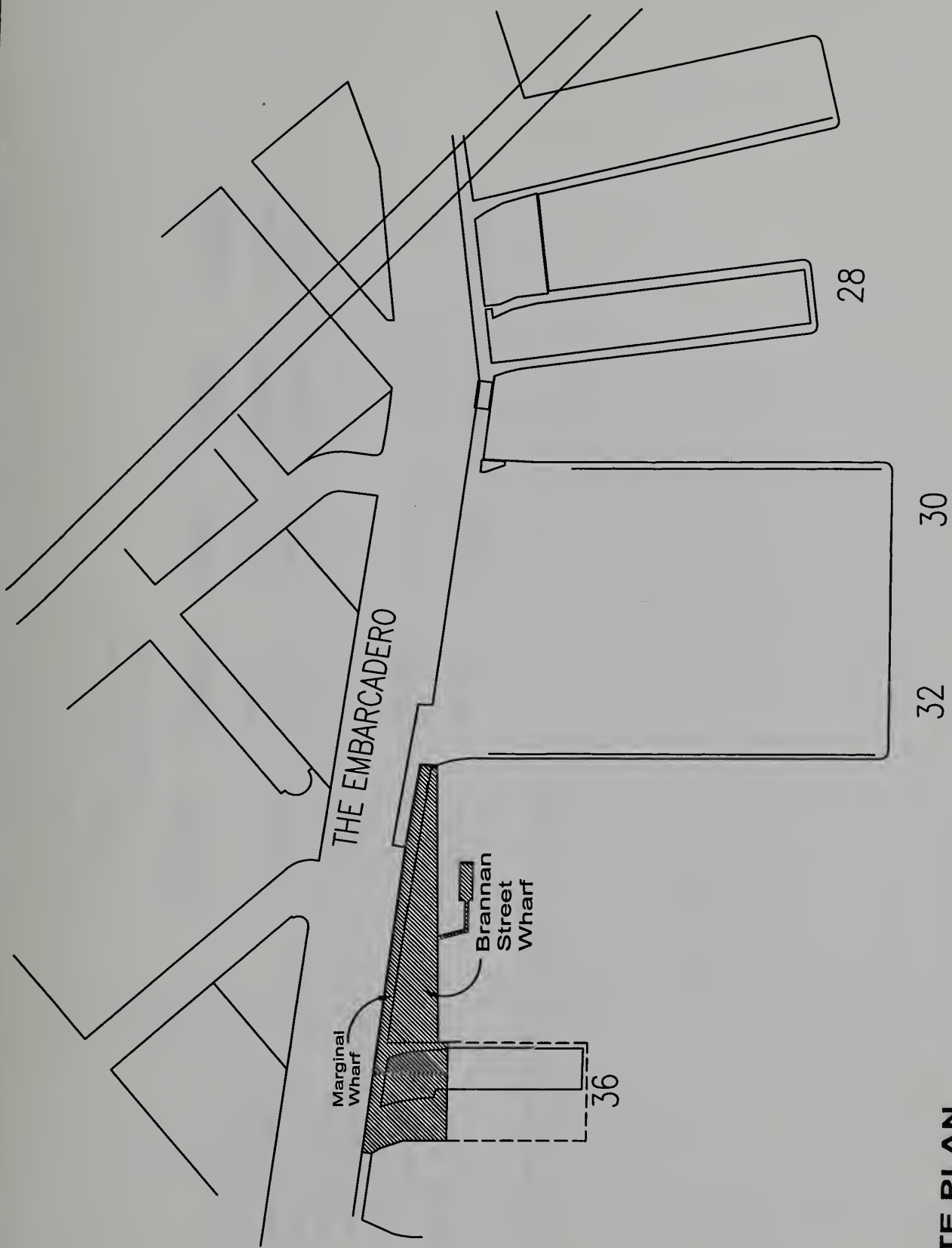
SAN FRANCISCO CRUISE TERMINAL, LLC

BRYANT STREET SEAWALL

ATTACHMENT 1

CONCEPTUAL DESIGN

Date 03.17.03

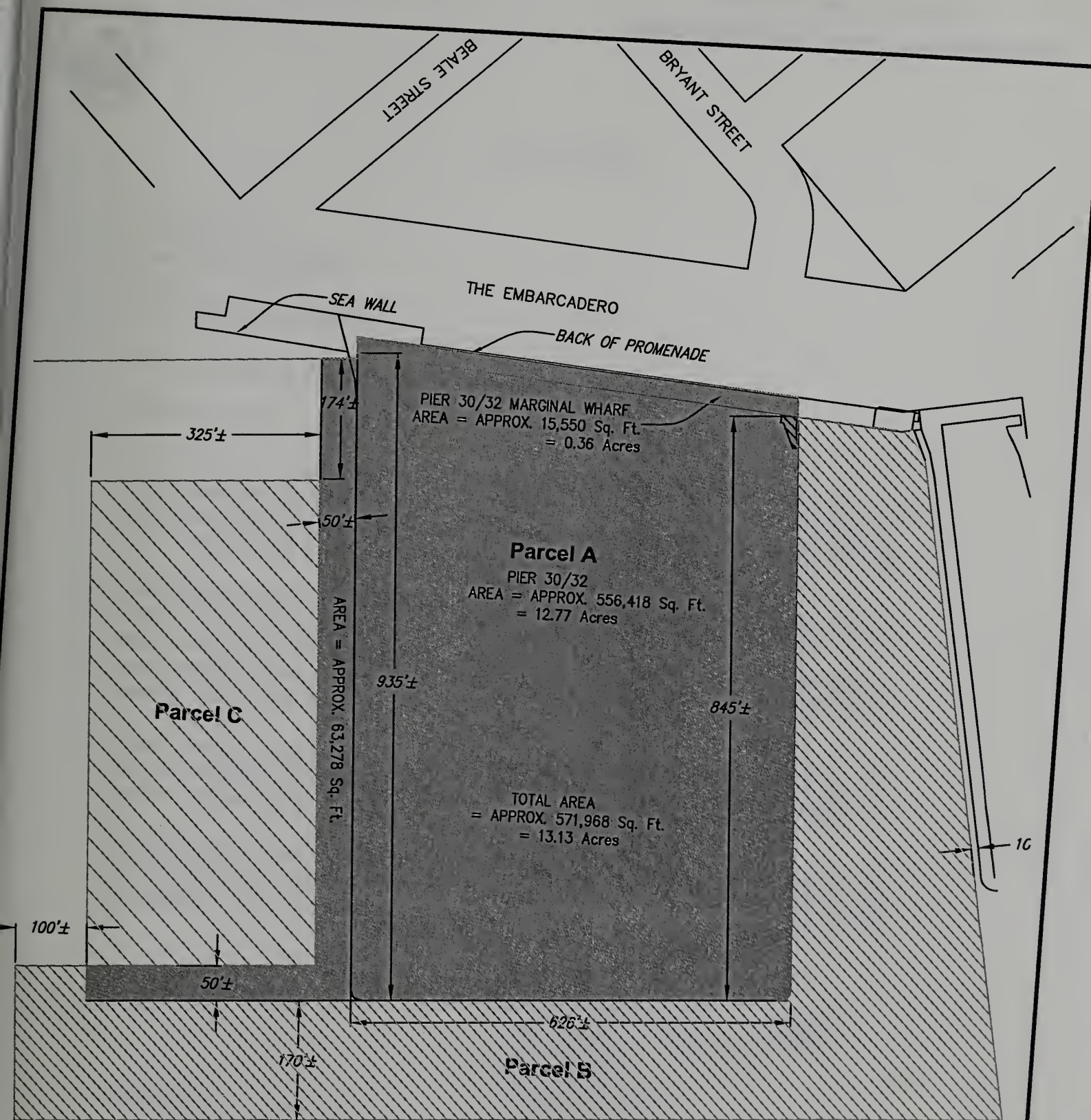


SITE PLAN
BRANNAN STREET WHARF
Port of San Francisco

**CPO725 — Special Area Plan
Funding Schedule**

	<u>FY 2001/02</u>	<u>FY 2002/03</u>	<u>FY 2003/04</u>	<u>FY 2004/05</u>	<u>FY 2005/06</u>
Beginning Balance	0	585,872	578,272	2,738,528	5,034,194
Annual Contribution*	1,535,000	1,596,400	2,160,256	2,295,666	2,295,733
Less:					
Pier 34 Removal	(851,161)				
Historic District Consultant	(97,967)				
Pier 24 Removal					
Subtotal	(949,128)	(1,604,000)	0	0	0
Ending Balance	585,872	578,272	2,738,528	5,034,194	7,329,927

* Funds are available by September 30th of the fiscal year



Piers 30 - 32 Site Plan

ATTACHMENT 4

City and County of San Francisco



Real Estate Division
Administrative Services Department

March 18, 2003

Doug Wong
Executive Director
Port of San Francisco
Pier 1
San Francisco, CA 94111

Re: Appraisal of .5-acre portion of Seawall Lot 330

Dear Mr. Wong:

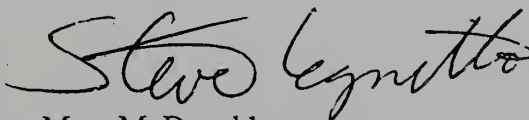
This letter is to confirm that an independent appraisal to estimate the Market Value of the Fee Simple Interest in a .5 acre portion of Seawall Lot 330, located at Bryant and the Embarcadero in the City of San Francisco, was prepared by Clifford Associates for the San Francisco Real Estate Department in February 2003.

The subject property encompasses only the northwest portion of the triangular Seawall Lot 330. For purposes of the analysis, the appraisal was based on an area of approximately .5 acre or 22,000 square feet that is designated for development of 137 units within a 20-story tower structure. Overall, the proposed development reflects a density of 274 units/acre.

Based upon the analysis in the appraisal report, the estimated Market Value of the Fee Simple Interest in the subject property is **Nine Million Three Hundred Thousand Dollars (\$9,300,000)**.

Copies of the appraisal report, entitled *Appraisal Report, Development Site Seawall Lot 330, Bryant St./The Embarcadero, San Francisco, CA*, are on file with the Department of Real Estate and the Port of San Francisco.

Sincerely,


for Marc McDonald
Director of Property

cvh:\sw330cliffordltr

ATTACHMENT 5

Summary of Port Returns
Base Case

Item	Total Through 2020	2003	2004	2005	2006	2007	2008	2009	2010
Rent to Port									
Construction Period Rent	700,500	0	150,000	150,000	150,000	150,000	100,500	0	0
Base Rent	13,658,000	0	0	0	0	0	281,000	850,000	850,000
Participation Rent	9,443,000	0	0	0	0	0	0	0	0
Total Rent	23,801,500	0	150,000	150,000	150,000	150,000	381,500	850,000	850,000
Sales Proceeds to Port									
SWL Land Payment @ COE	9,000,000	9,000,000	0	0	0	0	0	0	0
Condo Sales (inc. deferred land pmt.)	20,700,000	0	0	20,700,000	0	0	0	0	0
Subtotal Seawall Lot/Condos	29,700,000	9,000,000	0	20,700,000	0	0	0	0	0
Pier 30/32	14,200,000	0	0	0	0	0	0	0	0
Total Sales Proceeds	43,900,000	9,000,000	0	20,700,000	0	0	0	0	0

Base Case assumes: office rents
condo sales prices
retail rents
cruise calls

\$43 NNN (2003\$)
\$755 /sq.ft. avg. 1,100 sf unit (2003\$) including 12% affordable units
\$31 NNN (2003\$)
95 cruise ship calls in 2009

Summary of Port Returns
Base Case

Item	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Rent to Port										
Construction Period Rent	0	0	0	0	0	0	0	0	0	0
Base Rent	850,000	850,000	1,177,000	1,177,000	1,177,000	1,177,000	1,177,000	1,364,000	1,364,000	1,364,000
Participation Rent	0	162,000	276,000	565,000	773,000	1,085,000	1,305,000	1,486,000	1,719,000	2,072,000
Total Rent	850,000	1,012,000	1,453,000	1,742,000	1,950,000	2,262,000	2,482,000	2,850,000	3,083,000	3,436,000
Sales Proceeds to Port										
SWL Land Payment @ COE	0	0	0	0	0	0	0	0	0	0
Condo Sales (inc. deferred land pmt.)	0	0	0	0	0	0	0	0	0	0
Subtotal Seawall Lot/Condos	0	0	0	0	0	0	0	0	0	0
Pier 30/32	0	0	0	0	0	0	0	0	0	0
Total Sales Proceeds	0	0	0	0	0	0	0	0	0	14,200,000
										14,200,000

**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 03-27

ADOPTING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND THE STATE CEQA GUIDELINES (AND A STATEMENT OF OVERRIDING CONSIDERATIONS) IN CONNECTION WITH THE PROPOSED MIXED-USE CRUISE TERMINAL PROJECT, LOCATED ON PIER 30-32, AND A CONDOMINIUM TOWER ON A PORTION OF SEAWALL LOT 330 AND A PUBLIC OPEN SPACE PROJECT IN THE LOCATION OF PIER 34 AND 36, IN THE PORT OF SAN FRANCISCO, CITY AND COUNTY OF SAN FRANCISCO.

WHEREAS, The San Francisco Cruise Terminal Mixed-Use Project is proposed to be constructed on Piers 30-32 and Seawall Lot 330 and the Brannan Street Wharf Project is proposed to be located in the vicinity of Pier 34 and Pier 36; and

WHEREAS, The City and County of San Francisco, acting through the Planning Department ("Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Sections 21000 et seq.; "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Sections 15000 et seq., ("CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31") including:

- a. The Department determined that a supplement to the Waterfront Land Use Plan Environmental Impact Report, case no. 94.155E (hereinafter "SEIR") was required for the Cruise Terminal Mixed-Use Project and the Brannan Street Wharf Project and provided public notice of that determination by publication in a newspaper of general circulation on June 9, 2001; and
- b. On November 17, 2001, the Department published the Draft Supplemental Environmental Impact Report ("DSEIR") and provided public notice in a newspaper of general circulation of the availability of the DSEIR for public review and comment and of the date and time of the San Francisco Planning Commission ("Planning Commission") public hearing on the DSEIR; this notice was mailed to the Department's list of persons requesting such notice; and
- c. Notices of availability of the DSEIR and of the date and time of the public hearing were posted near the project site by Department staff on November 19, 2001; and
- d. On November 17, 2001, copies of the DSEIR were mailed or otherwise delivered to the list of persons requesting it, to those noted on the distribution list in the DSEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse; and

- e. Notice of Completion of the DSEIR (SCH# 1994123007) was filed with the State Secretary of Resources via the State Clearinghouse on November 19, 2002; and

WHEREAS, The Planning Commission held a duly advertised public hearing on the DSEIR on December 20, 2001, at which opportunity for public comment was given, and public comment was received on the DSEIR. The public review period for acceptance of written comments was extended to January 16, 2002, for a total of 60 days; and

WHEREAS, The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 60-day public review period for the DSEIR, prepared revisions to the text of the DSEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DSEIR. This material was presented in a "Draft Summary of Comments and Responses," published on April 30, 2002, was distributed to the Planning Commission and to all parties who commented on the DSEIR, and was available to others upon request at Department offices; and

WHEREAS, The Department prepared a Final Supplemental Environmental Impact Report ("Initial FSEIR"), consisting of the DSEIR, any consultations and comments received during the review process, any additional information that became available, and the Draft Summary of Comments and Responses, all as required by law. The Initial FSEIR also relied upon and included information from the Waterfront Plan SEIR. The Planning Commission found that the information in the Draft Summary of Comments and Responses and any additional information that became available did not require recirculation under CEQA Guidelines Section 15088.5. On May 9, 2002, the Planning Commission reviewed and considered the Initial FSEIR and, by Motion No. 16404, found that the Department had fulfilled all of the requirements of CEQA, the CEQA Guidelines and Chapter 31; and

WHEREAS, By letter to the Clerk of the Board of Supervisors dated May 28, 2002, Bluewater Network filed a timely appeal of the Planning Commission's certification of the Initial FSEIR to the Board of Supervisors ("Board") pursuant to Chapter 31, Section 31.16(a); and

WHEREAS, The Board held a duly-noticed public hearing on June 24, 2002 to consider the appeal of the Initial FSEIR, at which time the Board disapproved the certification of the Initial FSEIR by the Planning Commission and directed the Clerk to make findings and, in Motion No. M02-100, on file with the Clerk of the Board in File No. 021164, remanded the Initial FSEIR to the Planning Commission and directed the Planning Commission to revise the Initial FSEIR as specified in Board Motion No. M02-100; and

- WHEREAS, The Planning Department revised the Initial FSEIR in accordance with the Board's Motion No. M02-100. The revisions were included in the Revisions to the Final Supplemental Environmental Impact Report ("Revisions to the FSEIR"), published and made available to the Board, the Planning Commission, and the public on October 11, 2002; and
- WHEREAS, The Planning Commission held a duly-noticed public hearing on November 21, 2002 to consider certification of the FSEIR, as revised by the Revisions to the FSEIR (collectively the "Revised FSEIR"). The Planning Commission, by Motion No. 16480, on file with the Clerk of the Board in File No. 022021 and hereby declared to be a part of this motion as if set forth fully herein, made findings and certified the completion of the Revised FSEIR in compliance with CEQA, the CEQA Guidelines and Chapter 31; and
- WHEREAS, By letter to the Clerk of the Board dated December 11, 2002, San Franciscans for a Healthy Waterfront filed a timely appeal of the Planning Commission's certification of the Revised FSEIR to the Board pursuant to Chapter 31, Section 31.16(a); and
- WHEREAS, The Board held a duly-noticed public hearing on January 13, 2003, to consider the appeal of the Planning Commission's certification of the Revised FSEIR; and
- WHEREAS, By Motion No. M03-8, on file with the Clerk of the Board in File No. 022021 and hereby declared to be a part of this motion as if set forth fully herein, the Board adopted findings relating to the Revised FSEIR and found that the Revised FSEIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Draft Summary of Comments and Responses and the Revisions to the FSEIR contain no significant revisions to the FSEIR that would require recirculation under CEQA Guidelines Section 15088.5, and affirmed the Planning Commission's certification of the Revised FSEIR; and
- WHEREAS, Alternative 5, the Reduced Building Height Alternative described in the Revised FSEIR, was proposed in response to comments received on the DSEIR and was identified as the Project Sponsors' (the Port and San Francisco Cruise Terminal LLC ("SFCT")) preferred alternative (the "Preferred Alternative") for the San Francisco Cruise Terminal Mixed-Use Project; and
- WHEREAS, The Preferred Alternative and Brannan Street Wharf Project have been thoroughly analyzed in the Revised FSEIR and, since the Planning Commission's certification of the Revised FSEIR, there are no changed circumstances or other factors present that would trigger the need or

requirement for additional environmental review under CEQA, the CEQA Guidelines or Chapter 31; and

WHEREAS, In response to Port concerns regarding alienation of its property on Seawall Lot 330 and for other reasons, the Port and SFCT now propose to enter into an agreement for the purchase and sale (the "Sale Agreement") of an approximately ½ acre (22,000 square feet) portion of Seawall Lot 330 (the "Condo Site") and development thereon of the residential condominium tower identified in the FSEIR as the West Tower, located at the intersection of Bryant and Beale Streets, with the Port retaining ownership of the remainder of Seawall Lot 330 for future development of the balance of the site; and

WHEREAS, This Resolution is adopted in connection with proposed actions relating to the lease and development of the Bryant Street Pier (Pier 30-32), development of the Brannan Street Wharf and the sale and development of the Condominium Site (collectively referred to herein as the "Current Projects"), specifically the following:

- a. Lease Disposition and Development Agreement between the City, through the Port Commission, and SFCT governing delivery of a lease of Pier 30-32 and setting forth terms and conditions for the development of the James R. Herman International Cruise Terminal and a mixed-use retail, entertainment, office and public open space project at Pier 30-32 and construction of a public open space at the Brannan Street Wharf;
- b. Adopting findings authorizing the lifting of the public trust from the Condo Site, subject to approval of the State Lands Commission;
- c. Purchase and Sale Agreement between the City, through the Port Commission, and SFCT for the sale of a portion of Seawall Lot 330 and for the development of residential condominiums on such portion; and

WHEREAS, The environmental review files for the San Francisco Cruise Terminal Mixed-Use Project and the Brannan Street Wharf Project, the Waterfront Plan SEIR, and all correspondence and other documents have been made available for review by the Port Commission and the public. These files are available for public review at the Planning Department offices at 1660 Mission Street, and are made part of the record before the Port Commission by this reference herein; and

WHEREAS, The Port Commission has prepared proposed San Francisco Cruise Terminal Mixed-Use Project and Brannan Street Wharf Project California Environmental Quality Act Findings ("CEQA Findings"), as required by CEQA, regarding the alternatives, mitigation measures and significant environmental impacts analyzed in the Revised FSEIR, a statement of

overriding considerations for approving the Current Project, and a proposed mitigation monitoring and reporting program, which material was made available to the public and the Port Commission for the Commission's review, consideration and actions; now, therefore, be it

RESOLVED, The Current Project has been thoroughly analyzed in the Revised FSEIR and, since the Planning Commission's certification of the Revised FSEIR, there are no changed circumstances or other factors present that would trigger the need or requirement for additional environmental review under CEQA, the CEQA Guidelines or Chapter 31; and be it further

RESOLVED, That the San Francisco Port Commission has reviewed and considered the Revised FSEIR and the Waterfront Plan Final EIR and hereby adopts the CEQA Findings attached hereto as Attachment A, including a statement of overriding considerations and its Exhibits 1 and 2, and incorporates the CEQA Findings herein by this reference.

I hereby certify that the foregoing Resolution was ADOPTED by the Port Commission at its regular meeting of March 25, 2003.

Secretary

**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 03-28

WHEREAS, in 1997 the San Francisco Port Commission ("Commission") adopted the Waterfront Land Use Plan, including the Design and Access Element ("Waterfront Plan") after an intensive seven year planning process that culminated in the Board of Supervisors and Planning Commission adopting conforming amendments to the City's General Plan and Planning Code; and

WHEREAS, after a multi-year cooperative process involving the Port, the San Francisco Bay Conservation and Development Commission ("BCDC"), Save the Bay, and numerous interested community groups and individuals, the Commission adopted further amendments to the Waterfront Plan, and the BCDC adopted amendments to BCDC's San Francisco Bay Plan and BCDC's San Waterfront Special Area Plan ("Special Area Plan") in August 2000 which reflected consistent plans for the San Francisco Waterfront; and

WHEREAS, the Waterfront Plan and the Special Area Plan built upon, and represent the culmination of, planning efforts for the improvement of the waterfront and harbor of San Francisco which date back to the first BCDC Special Area Plan for the San Francisco Waterfront in 1972 and the City's Northeast Waterfront Plan in 1975; and

WHEREAS the Waterfront Plan and the Special Area Plan recognize that the development of Pier 30-32 and the surrounding area within the South Beach/China Basin Subarea identified in the Waterfront Plan should further the trust purposes of increasing maritime activities and expanding public use and enjoyment of the waterfront on trust lands at this location; and

WHEREAS, the Waterfront Plan includes the development of a Cruise Terminal mixed use project on Pier 30-32 and Seawall Lot 330 and development of an open space in the location of Piers 34 and 36, known as the Brannan Street Wharf within the South Beach/China Basin Area and summarizes objectives for that Area as follows:

"Although many of the piers in this area are in deteriorated condition and cannot support the array of industrial maritime activities that once dominated the area, there are still some scattered industrial maritime-related businesses that should be continued and consolidated in an efficient manner. . . . New developments will offer opportunities to expand such commercial and recreational maritime activities, and mix them with other public-oriented activities such as nighttime

entertainment, commercial recreation, family amusements, and commercial/residential uses on inland seawall lots. These new, mixed use areas will make the South Beach waterfront safer and more inviting and provide focal points for public enjoyment of the waterfront. At the same time, the introduction of new attractions must be balanced with the needs of adjacent South Beach residents. . . . [N]ew developments north of China Basin should extend the PortWalk where feasible, and provide a unifying pedestrian connection between the South Beach and Mission Bay neighborhoods." (Waterfront Plan, Executive Summary at p.11.); and

WHEREAS, the Waterfront Plan in the introduction to the South Beach/China Basin Waterfront states:

"The 13-acre pier and three-acre seawall lot together represent the Port's largest potential development site. . . . The vast size of Pier 30-32, which can berth 800 foot long ships on two sides, offers untold possibilities for providing public entertainment and attractions with a highly visible maritime element. In addition Pier 30-32 should be a highlight on the PortWalk which would extend the pedestrian path along The Embarcadero onto the pier. Because the site is both prominent and yet somewhat isolated from an architectural standpoint, new development here could become a signature piece in this neighborhood, and should set a standard for other architectural improvements along the shoreline." (Waterfront Plan, The Bryant Street Pier Mixed Use Opportunity Area, p. 146); and

WHEREAS, the Waterfront Plan includes the following specific objectives for the South Beach/China Basin Subarea:

"Preserve and rationalize existing industrial maritime activities in the area.

"Preserve and improve existing maritime uses that provide focal points for public enjoyment of commercial and recreation oriented maritime activities.

"Promote activities and public access to make the waterfront inviting and safe, and improve the living environment of the new and emerging Rincon Hill, South Beach, and Mission Bay neighborhoods.

"Take advantage of proximity to downtown San Francisco by providing attractions for the general public, while respecting the needs of adjacent residents.

"Create an integrated series of public access improvements that extend a shoreline PortWalk through the area, and

provide a unifying pedestrian connection between South Beach and Mission Bay at China Basin Channel.

"Establish high standards in the design of new development that give rise to a new architectural identity for the shoreline north of China Basin Channel." (Waterfront Plan, pp. 133-138.); and

WHEREAS, due to a strong desire expressed throughout the Port and community planning efforts to avoid proliferation of more intense, tourist-oriented commercial recreation, and the infeasibility and incompatibility of maritime cargo uses for the South Beach/China Basin Subarea, such uses were not included in the Waterfront Plan or the Special Area Plan; and

WHEREAS, the Pier 30-32 platform and most of the immediately surrounding areas bayward of the Embarcadero consist of obsolete, pile-supported piers structures that are physically no longer capable of serving any trust-related purpose without substantial modification; and

WHEREAS, the need for a new cruise ship terminal has been recognized for over forty years, most recently in a 1998 assessment by the Port Commission which found that cruise industry experts considered the present terminal at Pier 35 to be inferior to other cruise terminals in the United States; and

WHEREAS, that 1998 assessment evaluated alternative locations for a new cruise ship terminal and concluded that Pier 30-32 was the most viable site for a new cruise terminal in San Francisco because of dredging, site configuration and development considerations; and

WHEREAS, the Waterfront Plan includes the following Development Standards for the Bryant Street Pier Mixed Use Opportunity Area:

"Provide activities on Pier 30-32 which attract residents of the City and region, and which will complement and leverage the anticipated visitor activity the ballpark will bring to the waterfront, but also include businesses which cater to nearby residents and employees.

"Due to the extraordinary size of Pier 30-32, provide significant maritime and public access uses together with a multi-faceted mix of commercial activities, all oriented around a common theme (such as family-oriented entertainment, or a trade and promotion center for California food and agricultural products), rather than a singular commercial attraction.

"Encourage new activities that do not generate peak traffic volumes during commute periods, to minimize congestion on roadway and public transit systems.

"Require a high standard of architectural design which is appropriate to the prominence of the site and establishes a new

architectural identity and standard for waterside development in the South Beach area.

"[D]emolish Piers 34 and 36 to create a Brannan Street Wharf open space, integrated with the Embarcadero Promenade and the public access and shoreline improvements for new development on Piers 30-32 and 38." (Waterfront Plan, pp. 146-147.)

WHEREAS, the Waterfront Plan thus allows for a mix of trust uses within the South Beach/China Basin Subarea, including a signature passenger terminal, neighborhood and visitor-serving retail, maritime and general office, and public access uses, activities that would attract residents of the City and the region, businesses that would cater to nearby residents and workers, embarking and debarking cruise passengers, and cruise ship crewmembers, while providing significantly expanded open space bayward of The Embarcadero; and

WHEREAS, the Commission has complete authority to do all things it deems necessary in connection with the use, conduct, operation, management, maintenance, regulation, improvement and control of the harbor of San Francisco which are not prohibited by State law or the City Charter and which are in conformance with the Burton Act, including reconstruction and repair of public or commercial buildings, preservation or restoration of marine resources, and the lease of said facilities for limited periods not exceeding 66 years for purposes consistent with the trusts upon which the lands are held by the State and with the requirements of commerce and navigation, all as provided in Section 3 of the Burton Act; and

WHEREAS, on May 25, 1999 the Commission approved Resolution No. 99-36, authorizing Port staff to issue a Request for Qualifications and Proposals ("RFQ/P) for a mixed use cruise terminal project on Pier 30-32 and SWL 330, in order to assess the availability of private investment to achieve its development objectives and determine the level of interest in the private sector; and

WHEREAS, the RFQ/P identified the following goals and objectives for a mixed use cruise terminal project on Pier 30-32 and SWL 330: (1) provide a signature mixed use waterfront project which achieves a high level of year-round public use and support; (2) include development of the state-of-the-art Cruise Terminal which enhances the Port's international reputation as a first class cruise destination and preserves and creates new maritime jobs on this site and through San Francisco's waterfront; (3) achieve a use and design program which respects and complements the existing South Beach neighborhood; and (4) provide for the enhancement of the Port's financial position over the term of the leasehold; and

WHEREAS, the RFQ/P set forth as the primary objective for mixed use cruise terminal project on Pier 30-32 and SWL 330 the development of a high-quality

cruise terminal, as part of a mixed use project which provides a focal point on the waterfront, mid-way between Downtown and the new ballpark; and

WHEREAS, the Port received qualifications from four major development teams ("Respondents") and with the assistance of an independent real estate economics consultant invited three teams to submit proposals, one of whom subsequently decided to withdraw from the process; and

WHEREAS, the Port received proposals from two Respondents, whose proposals were reviewed and analyzed by Port staff, and an independent real estate economics consultant; and

WHEREAS, the Commission reviewed and evaluated the Respondents, reviewed and evaluated their responses, including the requested additional information, their interviews with Port staff, the analyses of economic, design and planning and land use parameters prepared by Port staff and by the Port's independent real estate economics consultants, and reviewed and evaluated the Port staff recommendation, and determined that San Francisco Cruise Terminal LLC ("SFCT") best met the qualification requirements for the development of a mixed use cruise terminal project on Pier 30-32 and SWL 330; and

WHEREAS, SFCT includes ownership and significant participation by entities who are owned and controlled by large scale maritime and cruise industry entities, including the Port of Singapore (PSA Corporation) and Chinese Maritime Transport, Inc.; and

WHEREAS, on January 11, 2000 the Commission approved Resolution No. 00-03, awarding SFCT the opportunity to enter into an Exclusive Right to Negotiate agreement; and

WHEREAS, as originally proposed by SFCT, the project included a two berth cruise terminal, commercial retail, office parking and open space on Piers 30-32 and a 400 room hotel and 11 time share units on Seawall Lot (SWL) 330; and

WHEREAS, SFCT has pursued its due diligence to determine project feasibility, conducted market research into various aspects of the project, undertaken physical and engineering investigations about the pier, and worked to address concerns about the cruise terminal; and

WHEREAS, as a result of such due diligence, SFCT determined that the cost of seismically retrofitting Piers 30-32 was significantly greater than originally thought; and

WHEREAS, to offset these increased costs and respond to market, neighborhood, and public trust concerns, SFCT proposed revisions to its project, which increased the amount of office space on Piers 30-32, and proposed

residential condominiums as an alternative to the hotel and time-share units on Seawall Lot 330; and

WHEREAS, SFCT and Port staff worked with the Port Commission as well as with respective staffs of the State Lands Commission (SLC), Bay Conservation and Development Commission (BCDC), and the Attorney's General's Office to address public trust issues raised by the inclusion of general office and certain neighborhood-using (or non-trust) retail uses; and

WHEREAS, Assembly Member Shelley sponsored legislation, known as AB 1389, which passed the State legislature in September 2001 and was signed by the Governor in October 2001; and

WHEREAS, among other matters, the State Legislature, in the exercise of its retained power as trustee of the public trust, in view of the unique circumstances existing at Pier 30-32 on the San Francisco waterfront and the considerable statewide public benefit and promotion of maritime transportation that will be brought about by construction of a new passenger cruise terminal, improvements to berthing facilities for waterborne transit, a lagoon, improved public access and commercial public trust uses on Pier 30-32, authorized the San Francisco Port Commission to approve a cruise terminal development on the San Francisco waterfront at Pier 30-32 which includes general office use and general retail use, if all of the following conditions are met:

(a) The development includes a modern two-berth cruise terminal.

(b) The development includes public access that meets the requirements of the Special Area Plan and the San Francisco Bay Plan as interpreted by BCDC and that also offers expanded viewsheds and public access.

(c) Prior to submitting a major permit application to BCDC for the cruise terminal development, the Port, after review by or on behalf of BCDC, approves the final design concept for the Brannan Street Wharf.

(d) Prior to the issuance of a BCDC permit for the cruise terminal development, the Port and BCDC enter into an enforceable agreement that provides for the Port to fund (directly or through grant funding), design and construct the Brannan Street Wharf consistent with the following timetable: (1) the Port will complete preliminary engineering drawings for the Brannan Street Wharf and prepare and submit to BCDC a financing plan approved by the Port indicating funding sources and estimated construction costs at the time that the construction of the cruise terminal development commences; (2) the Port will complete Phase I, the northern portion of the Brannan Street Wharf (in the area of Pier 34) as described in the Special Area Plan

within two years of the issuance of a final certificate of occupancy for the cruise terminal development, or if all necessary funds are made available through grants or other funding, then contemporaneously with the construction of the cruise terminal development; and, (3) the Port will remove Pier 36 and complete the Brannan Street Wharf within 5 years of the issuance of a final certificate of occupancy for the cruise terminal development, or such later date as approved by BCDC, or if all necessary funds are made available through grants, reimbursable grants or other funding, then contemporaneously with the cruise terminal development.

(e) The amount of office space in the development does not exceed 300,000 leaseable square feet, all of which must be above the ground level, which office space will also be designed to contribute to a development design that includes public spaces and promotes visual and public access. An additional 25,000 leaseable square feet of space in or adjacent to the cruiseship terminal building may be used for general office use until the earlier of: (1) 14 years from the first date of occupancy, or (2) when home berthing ships above 5000 passenger berth capacity call for twenty days per year for two consecutive years. The development includes a marketing program designed to maximize the amount of general office space occupied by trust-related tenants over the life of the development.

(f) The cruise terminal project as approved or modified by BCDC complies with the requirements set forth [above]. "Trust retail" means visitor-serving public trust retail, and restaurant use. "Non-trust retail" means other retail, and theatre uses. The amount of trust retail leasable space must be equal to or greater than the non-trust retail leasable space. The amount of trust retail leaseable space, nontrust retail leasable space, and visitor serving trust use converted from trust or nontrust retail, as approved by BCDC, shall be at least 40 percent of the total amount of office space;

WHEREAS, Port staff and SFCT have worked diligently to develop information, resolve potential problems, negotiate financial terms and risk allocation while adhering to the project major goals, primary objectives and criteria for evaluation, consistent with AB 1389; and

WHEREAS, in response to AB 1389 and the needs of the Port and the public, SFCT proposed further revisions to the mixed use cruise terminal project on Pier 30-32 and SWL 330, as more particularly described in Attachment 2 attached to this resolution (the revised cruise terminal project on Pier 30-32, the revised condominium project on Seawall Lot 330, and the Brannan Street Wharf, all as described in Attachment 2, are referred to in this resolution respectively as the "Cruise Terminal Project", the "Condo Project" and the "Brannan Street Wharf, " and collectively as the "Projects"); and

- WHEREAS, Port staff and SFCT negotiated a Term Sheet, completed in June 2002, setting forth the revised terms under which the parties would negotiate a Lease Development and Disposition Agreement, and Lease for Pier 30-32, a Purchase and Sale Agreement for the Condo Site at Seawall Lot 330, and an arrangement that would allow for the accelerated construction of the Brannan Street Wharf in a timeframe consistent with AB 1389; and
- WHEREAS, the Term Sheet stipulates that the Port would sell only a portion of Seawall Lot 330 to SFCT, consisting of approximately 22,000 square feet on the north west corner of the Seawall Lot 330 (the "Condo Site") to SFCT and SFCT would construct the Condo Project thereon ; and
- WHEREAS, the funds received by Port from the sale of the Condo Site as well proceeds generated from sales of the Condo Project after SFCT obtains a reduced return on its costs and investment would allow for the subsequent construction of the Brannan Street Wharf as well as contribute significantly to the direct costs of the Cruise Terminal at Piers 30-32; and
- WHEREAS, by Port Commission Resolution, the Port Commission authorized the Executive Director to extend the exclusive negotiating period, and directed negotiations to proceed based on the provisions of the Term Sheet; and
- WHEREAS, consistent with the ERN and Term Sheet, Port staff and SFCT have negotiated the LDDA, Lease, Sale Agreement and related exhibits and attachments thereto (collectively, the "Project Documents"), all on the material terms and conditions set forth in the Memorandum to Port Commissioners, dated March 19 for Agenda Item No. 8B for the Port Commission's March 25, 2003 meeting, and copies of the Project Documents and Memorandum to Port Commissioners are on file for this item with the Port Commission Secretary; and
- WHEREAS, the Commission, by its approval of the Project Documents is acting within the scope of the authority granted by AB 1389, because the Project Documents are necessary to accomplish the construction of the Cruise Terminal Project and the Brannan Street Wharf, all in accordance with the policies, objectives and restrictions stated in AB 1389 and in the Waterfront Plan; and
- WHEREAS, the Commission, by its approval of the Project Documents is also acting within the scope of authority granted by Section 3 of the Burton Act, because the development of the Cruise Terminal Project and Brannan Street Wharf Project are within the scope of the Commission's authority to:
- (1) improve and conduct the harbor and construct, reconstruct, repair and operate all works, buildings, facilities, utilities, structures and appliances, incidental, necessary or convenient for the promotion and accommodation of commerce and navigation;

- (2) use Port property for all commerce and industrial purposes and the construction, reconstruction, repair, maintenance of commercial and industrial buildings, plants and facilities;
- (3) construct, reconstruct, repair, maintain and operate public buildings, parks, playgrounds . . . and recreation facilities and all works, buildings, facilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of any such uses;
- (4) preserve or restore marine resources consistent with the primary mission of the San Francisco Harbor; and
- (5) enter into 66-year leases for purposes consistent with the public and Burton Act trusts and with the requirements of commerce and navigation, provided that the revenues from such leases shall be used for purposes consistent with the trust; and

WHEREAS, the Lease is for a term of 66 years, and revenue from the Lease will be used for such purposes as may be established through the Port and City budget and fiscal process intended to ensure that Harbor Fund revenues are expended for trust purposes as required under the Burton Act; and

WHEREAS, the sale of the Condo Site is necessary for the achievement of the trust purposes on Pier 30-32 and the Brannan Street Wharf; and

WHEREAS, the Port's authorization for the sale of the Condo Site is pursuant to the authority granted by the Legislature to the Port to approve and execute certain public trust exchanges subject to State Lands Commission approval and findings, as set forth in Section 5 of Chapter 310, Stats. 1987 ("Ch. 310"), which authorizes the City to exchange certain Port property found unnecessary for public trust purposes for lands of equal or greater value that are useful for trust purposes, subject to approval by the State Lands Commission; and

WHEREAS, due to the success of the Port's efforts to revitalize Pier 80 as a niche cargo facility and the significant increase in demand and new markets for maritime and other waterfront-related industrial activities located in that area, an approximately 10-acre non-trust portion of the Western Pacific property located waterside and adjacent to Pier 80 is ideally situated for the Port's growing maritime industrial business in the area because of its adjacency to the Pier 80 terminal, and would be an attractive "receiver" site for an exchange of the public trust off of the Condo Site; and

WHEREAS, as a condition precedent to sale of the Condo Site, this proposed trust exchange must be reviewed and approved by the State Lands Commission, and the Port would enter into a legally binding agreement with the State Lands Commission, setting forth the conditions and procedure for accomplishing the Trust exchange; and

WHEREAS, because the Sale Agreement contemplates the lifting of the public trust and Burton Act trust from the Condo Site, subject to approval of the State

Lands Commission, and authorizes the sale of the Condo Site to SFCT upon satisfaction or waiver of the conditions precedent set forth therein, the Port Commission hereby makes the following findings relative to the Condo Site, as required by Ch. 310:

1. ***The Condo Site has been filled and reclaimed.*** The Condo Site is a portion of Seawall Lot 330, which was filled in the early part of the 20th century as part of the Port's program of reclaiming lands between the new seawall and the previously existing City front, for the purpose of generating revenues used to support the improvement of the harbor.
2. ***The Condo Site is cut off from access to the waters of San Francisco Bay.*** All of the Condo Site is located on filled land, located on the landside of the 100 foot wide Embarcadero Roadway, which consists of 6 traffic lanes and the MUNI light-rail corridor. No immediate access to the waters of San Francisco Bay exists from any portion of the Condo Site.
3. ***The Condo Site constitutes a relatively small portion of the granted tide and submerged lands.*** The total area of the Condo Site is approximately 22,000 square feet (approximately ½ acre. The total amount of granted tide and submerged lands held by the Port is approximately 725 acres, of which the Condo Site represents 0.07%.
4. ***The Condo Site is no longer needed or required for the promotion of the public trust for commerce, navigation and fisheries or the statutory trust.*** When originally filled, Seawall Lot 330 provided support for the maritime industrial activities occurring along the Port's northern waterfront. However, as industrial uses shifted southward, the entire South Beach neighborhood surrounding the site, was redeveloped pursuant to the Rincon/South Beach Redevelopment Plan. That plan created high density residential apartment and condominium developments surrounding the site on 3 sides. For many years, the site has been operated on an interim basis for occasional special events, and used as a parking lot serving the surrounding residences and downtown office market. The site is in an undesirable location for open space or park use, being cut-off from the water, immediately adjacent to the Bay Bridge, and adjoining two major roadways. The Port, with advice from an independent hospitality consultant, has determined that development of a hotel would be economically infeasible. Lack of interest by private developers has borne out this conclusion. At the present time, new hotel development in San Francisco is not economically viable. Because cruise ship activity is seasonal with the majority of calls occurring in the summer, such limited operation may not generate the year-round support necessary for the successful operation of a hotel on the Condo Site.

5. *No substantial interference with the trust uses and purposes will ensue.* As explained above, the Condo Site is located across the Embarcadero and cut-off from the water. The adjoining properties that would be affected by development of the Condo Site, while subject to the Burton Act, have had the trust restriction on use lifted by the Legislature, and have been fully developed as residential. The proposed sale and residential development of the Condo Site would achieve maximum value of the site, while being the most compatible with the surrounding uses. As explained above, rather than interference with trust uses and purposes, the proposed exchange would significantly promote the trust by generating sufficient funds to allow the development of the Cruise Terminal and Brannan Street Wharf, while accommodating a resident population that could take full advantage of the public amenities located along the Port, and better insure the success of Port projects within the northern waterfront; and

WHEREAS, the City's Director of Property has determined, based on an independent MAI appraisal that the purchase price of \$9,324,000, reflects the fair market value of the Condo Site; and

WHEREAS, the Project Documents conform to all local laws and regulations and are not prohibited by the Charter; and

WHEREAS, the Projects are consistent with the Waterfront Plan uses and policies as described above; and

WHEREAS, the Projects are consistent with the San Francisco General Plan's Northeastern Waterfront Plan ("Northeastern Waterfront Plan") objectives and policies designed to promote the development of commercial and recreational maritime activities in combination with water-oriented commercial recreation and public assembly uses, development of a new cruise terminal and provision of as much open space as possible that allows the public to view the maritime activity at the cruise terminal; and

WHEREAS, on May 9, 2002, the Planning Commission reviewed and considered the FSEIR and, by Motion No. 16404, found that the Department had fulfilled all procedural requirements of CEQA, the CEQA Guidelines and Chapter 31; and

WHEREAS, on June 24, 2002, on appeal, the Board disapproved the certification of the FSEIR by the Planning Commission and directed the Clerk to make findings and, in Motion No. M02-100, on file with the Clerk of the Board in File No. 021164, remanded the FSEIR to the Planning Commission and directed the Planning Commission to revise the FSEIR as specified in Board Motion No. M02-100; and

WHEREAS, the Planning Department revised the FSEIR in accordance with the Board's Motion No. M02-100, and the revisions were included in the

Revisions to the Final Supplemental Environmental Impact Report ("Revisions to the FSEIR"), published and made available to the Board, the Planning Commission and the public on October 11, 2002; and

WHEREAS, the Planning Commission held a duly-noticed public hearing on November 21, 2002 to consider certification of the FSEIR as revised, and the Planning Commission, by Motion No. 16480, on file with the Clerk of the Board in File No. 022021 and hereby declared to be a part of this Resolution as if set forth fully herein, made findings and certified the completion of the FSEIR in compliance with CEQA, the CEQA Guidelines and Chapter 31; and

WHEREAS, the Board held a duly-noticed public hearing on January 13, 2003, to consider an appeal of the Planning Commission's certification of the FSEIR, as revised; and

WHEREAS, the Board, by Motion No. M03-8, on file with the Clerk of the Board in File No. 022021 and hereby declared to be a part of this Resolution as if set forth fully herein, the Board adopted findings relating to the FSEIR and found that the FSEIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Summary of Comments and Responses and the Revisions to the FSEIR contain no significant revisions to the FSEIR that would require recirculation under CEQA Guidelines Section 15088.5, and affirmed the Planning Commission's certification of the FSEIR; and

WHEREAS, as a result of comments raised during the environmental review process, the FSEIR evaluated a Preferred Alternative for development on Pier 30-32 and Seawall Lot 330 which included proposed development on the entire portion of Seawall Lot 330, including the portion of Seawall Lot 330 other than the Condo Site (the "Residual Site"), with development on the Residual Site in seven buildings ranging in height from 40 feet to 105 feet; and

WHEREAS, the Port Commission finds that the height of the seven buildings on the Residual Site studied as the Preferred Alternative in the FSEIR would best achieve the Port's planning objectives for the area by placement of the tallest buildings on the Condo Site, stepping down in height toward the Bay by providing a development on the Residual Site that is consistent with the overall plan for Seawall Lot 330 as described in the Preferred Alternative in the FSEIR and the neighborhood; and the achievement of such planning goals would also maximize the proceeds from the Condo Site, which proceeds are necessary to achieve the public benefits to be provided on the Brannan Street Wharf and Piers 30-32; now, therefore, be it

RESOLVED, that the Port Commission has reviewed and considered the information contained in the Waterfront Land Use Plan FEIR and the FSEIR as revised, and for purposes of compliance with CEQA, the Project

Documents and all other matters and actions approved by the Port Commission by this Resolution reflect the Projects examined in the FSEIR for which the Port Commission by Resolution No. 03-27 has adopted findings with respect to the FSEIR as required by CEQA, including a Mitigation Monitoring and Reporting Program, which findings are on file with the Secretary of the Port Commission under File No. 03-27, and which findings are incorporated herein by this reference; and be it further

RESOLVED, for the reasons set forth herein the Commission finds that the Project Documents are in conformance with the Burton Act and are not prohibited by State law; and be it further

RESOLVED, for the reasons set forth herein the Commission finds that the LDDA and the Lease are in conformance with the AB 1389 and are specifically authorized by the State Legislature; and be it further

RESOLVED, for the reasons set forth herein, the Commission finds that the Condo Site is a portion of the Port's granted lands that has been filled and reclaimed, is cut off from access to the waters of San Francisco Bay, constitutes a relatively small portion of the granted tide and submerged lands, is no longer needed or required for the promotion of the public trust for commerce, navigation, and fisheries or the statutory trust, and no substantial interference with other trust uses and purposes will ensue from a lifting of the public trust from the Condo Site; and be it further

RESOLVED, that the Sale Agreement is in conformance with the Burton Act and Ch. 310, subject to approval by the State Lands Commission; and be it further

RESOLVED, that the Commission approves the form and substance of the LDDA, the Lease, the Sale Agreement, including all attachments and exhibits thereto, and the transactions which the Project Documents contemplate, incorporating the business terms set forth in the Memorandum for Agenda Item 8B for the Port Commission meeting on March 25, 2003; and be it further

RESOLVED, that SFCT was selected to develop the Condo Site pursuant to a validly authorized and conducted RFQ/P process, and that the sale of the Condo Site is within the scope of Section V of the RFQ/P (General Terms and Conditions) that allows the Port to, during negotiation, to expand or contract the scope of the proposed project, including adding or subtracting land parcels or otherwise altering the project concept from that which was initially proposed in order to respond to new information, community or environmental issues, or opportunities to improve the financial return to the Port from the project or enhance public or maritime amenities; and be it further

RESOLVED, that it is in the City's and Port's best interest to convey the Condo Site directly to SFCT, that the public interest or necessity demands, or will not

be inconvenienced by, the sale of the Condo Site directly to SFCT pursuant to the Sale Agreement; and be it further

RESOLVED, that the Port Commission authorizes and directs the Executive Director of the Port (the "Executive Director") to forward the Lease to the Board of Supervisors for approval, pursuant to its authority under Charter Section 9.118(c), and upon the effectiveness of such approval, to execute the LDDA, and subject to the terms of the LDDA, to execute the Lease, in substantially the form of such agreements on file with the Commission Secretary, and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, that the Port Commission authorizes and directs the Executive Director of the Port (the "Executive Director") to forward the Sale Agreement to the Board of Supervisors for approval, pursuant to its authority under Charter Section 9.118(c), and upon the effectiveness of such approval, to execute the Sale Agreement, and subject to the terms of the Sale Agreement, to execute all such further agreements contemplated therein as are required to convey the Condo Site to the Developer, in substantially the form of such agreements on file with the Commission Secretary, and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, that the City's Director of Property and the Port's Executive Director are hereby authorized and urged, in the name and on behalf of the City and County and the Port, to execute and deliver the deed to the Condo Site to SFCT upon the closing in accordance with the terms and conditions of the Sale Agreement, and to take any and all steps (including, but not limited to, the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents and other instruments or documents) as they deem necessary or appropriate in order to consummate the conveyance of the Condo Site pursuant to the Sale Agreement, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Director of Property and Executive Director of any such documents; and be it further

RESOLVED, that the Executive Director shall determine satisfaction of the conditions precedent under the LDDA to the conveyance of the leasehold estate in the Cruise Terminal Project site, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Lease; and be it further

RESOLVED, that the Executive Director shall determine satisfaction of the conditions precedent under the Sale Agreement to the conveyance of the fee simple estate in the Condo Site, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of a grant deed; and be it further

RESOLVED, that the Port Commission authorizes the Executive Director and, as to the Sale Agreement, the City's Director of Property, to enter into any additions, amendments or other modifications to the LDDA, the Lease and the Sale Agreement (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) that the Executive Director and Director of Property, in consultation with the City Attorney, determine are in the best interests of the City, do not increase the rent, decrease the sale price, and otherwise do not materially increase the obligations or liabilities of the Port or City or materially decrease the public benefits accruing to Port or City, and are necessary or advisable to complete the transactions which the LDDA, Lease and Sale Agreement contemplate and effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the LDDA and the Lease, the execution and delivery by the Executive Director and Director of Real Property of the Sale Agreement, and any such amendments to any such documents; and be it further

RESOLVED, that the Port Commission authorizes and urges the Executive Director, and any other appropriate officers, agents or employees of the City to take any and all steps (including, but not limited to, the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions under the LDDA in accordance with this resolution, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, that the Port Commission authorizes and urges the Executive Director to negotiate and take any and all necessary steps to accomplish the trust exchange contemplated by the Sale Agreement, including, without limitation, negotiating an agreement with the State Lands Commission to transfer the public trust to such property as is acceptable to the Port and the State Lands Commission; and be it further

RESOLVED, that the Port Commission authorizes and urges the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps necessary to accept and expend all proceeds payable to the Port from SFCT under the terms of the Sale Agreement and its exhibits (including the Condo Sale Proceeds and Residual Condo Proceeds as those terms are defined in the Sale Agreement), towards the development of the Brannan Street Wharf and the Piers 30-32 Cruise Terminal Project, subject to the further terms and conditions of the Sale Agreement, including without limitation, establishing a segregated account to hold such proceeds

and other Port and grant funds designated for Brannan Street Wharf costs; and be it further

RESOLVED, that the Port Commission authorizes and urges the Executive Director, and any other appropriate officers, agents or employees of the Port and City to take any and all steps necessary to apply for, accept, and expend grant funding for purposes of development and construction of the Brannan Street Wharf; and

RESOLVED, that the Port Commission authorizes and urges the Executive Director, the City's Director of Real Property, and any other appropriate officers, agents or employees of the City to take any and all steps (including, but not limited to, the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents and other instruments or documents, the filing and pursuit of appropriate title or validating actions, and the establishment of separate segregated accounts dedicated to proceeds received by Port from the sale of the Condo Site and the sale of condominium units thereon) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions under the LDDA in accordance with this resolution, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, regardless of the terms of AB 1389 that links commencement of construction of the Brannan Street Wharf to commencement of construction of the Cruise Terminal Project, the Port Commission hereby declares that its policy shall be to commence construction of the Brannan Street Wharf as soon as practicable after (1) the Port has obtained all necessary entitlements permitting the construction of the Brannan Street Wharf, and (2) the Port has obtained sufficient funds to allow for the construction thereof from the Condo Sale Proceeds, the Residual Condo Proceeds, the Port's Special Area Plan capital account, and any other available grant or other funding received on account of the Brannan Street Wharf, and the Port Commission hereby authorizes and directs the Executive Director to take any and all steps necessary to cause such early construction of the Brannan Street Wharf, including giving such notices to SFCT to commence the early construction to the extent permitted under the terms of the LDDA, and entering into such agreements with BCDC governing funding, design and construction of the Brannan Street Wharf as are contemplated in AB 1389; and be it further

RESOLVED, that in furtherance of the policy set forth in the immediately preceding "Resolved" clause, the Port hereby declares that it shall use funds held in, and appropriated in the future for, the Port's Special Area Plan (SAP) capital plan fund, first to fulfill its \$6 Million obligation for Brannan Street Wharf costs in accordance with the LDDA and the foregoing policy,

to the extent that such funds are not already committed to other purposes as of the date of this Resolution; and be it further

RESOLVED, that the Port Commission recognizes the economic benefits to the Condo Project, and the community benefits to the surrounding neighborhood of the height limits set forth in the FSEIR for the remainder of SWL 330, it is the intent of the Commission to comply with the height limits set forth in the FSEIR, and it shall be the Commission's policy to institute a thorough public review process involving SFCT, the South Beach Community Advisory Committee, the Waterfront Design Advisory Committee and other interested members of the public prior to approving any new development on the remainder of SWL 330; and, be it further

RESOLVED, that the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the Port Commission or the City with respect to the LDDA, the Lease and the Sale Agreement.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 25, 2003.

Secretary

to the extent that such funds are not already committed to other purposes as of the date of this Resolution; and be it further

RESOLVED, that the Port Commission recognizes the economic benefits to the Condo Project, and the community benefits to the surrounding neighborhood of the height limits set forth in the FSEIR for the remainder of SWL 330, it is the intent of the Commission to comply with the height limits set forth in the FSEIR, and it shall be the Commission's policy to institute a thorough public review process involving SFCT, the South Beach Community Advisory Committee, the Waterfront Design Advisory Committee and other interested members of the public prior to approving any new development on the remainder of SWL 330.

RESOLVED, that the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the Port Commission or the City with respect to the LDDA, the Lease and the Sale Agreement.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 25, 2003.

Secretary

ATTACHMENT 1

The San Francisco Port Commission has undertaken the following actions in the South Beach/China Basin Waterfront Subarea, from the new waterfront Rincon Park to PacBell Park, in furtherance of a highly beneficial program of harbor development to achieve trust purposes consistent with Waterfront Plan policies and objectives:

Preserve and rationalize existing industrial maritime activities in the area

- Continues to allow commercial fish processing and handling uses at Pier 28 until an expansion at Pier 45 Shed C can be completed for relocating these users.
- Committed \$4 million of Port funds for the development of Shed C to facilitate the relocation of these users.
- Continues to allow Pier 26 to be used for underwater construction and diving tenants.
- Required construction of the ferry landing at PacBell Park which already serves ballpark patrons and which will be available in the future to serve commuters to and from the Mission Bay development.

Preserve and improve existing maritime uses that provide focal points for public enjoyment of commercial and recreation oriented maritime activities.

- Supported the designation of the firehouse at Pier 22 as a local City landmark, and assisted the Fire Department in planning for the expansion of the facility.
- Executed a 30-year lease with Pier 38 Maritime Recreation Center at Pier 38 for a dry boat storage and recreational boating center, to which the Port contributed \$1.5 million for public access and substructure improvements.
- Leased to the San Francisco Redevelopment Agency the site for a 700-berth recreational boating marina.
- Entered into negotiation with a competitively selected development team for the Bryant Street Pier Project, which includes a new two-berth, 100,000-square-foot cruise ship terminal, boat docks, and ancillary recreational boat mooring.

Promote activities and public access to make the waterfront inviting and safe, and improve the living environment of the new and emerging Rincon Hill, South Beach and Mission Bay neighborhoods.

Rincon Hill

Leased to the San Francisco Redevelopment Agency for \$1/year the land for the construction of Rincon Park, a 2-acre waterfront park within which two signature restaurants will be constructed to provide a new waterfront gathering place for the public. Allow the San Francisco Municipal Railway and Department of Public Works to realign the Embarcadero Roadway adjacent to Rincon Park and dedicated land and entered into agreements that provided for the Muni Metro Extension, which provides significantly improved public transportation service to the South Beach/China Basin Subarea.

South Beach

Leased to the San Francisco Redevelopment Agency streets and public rights of way to allow for the construction of sidewalks and public areas throughout the South Beach Redevelopment Project Area.

Leased land to the San Francisco Redevelopment Agency for the construction of the \$30 million, 700-berth South Beach Marina and \$2 million, 0.5-acre South Beach Park

adjacent to and just north of Pacific Bell Park, including shoreline public access along the entire marina.

Supported the San Francisco Redevelopment Agency in a \$10 million expansion of the South Beach Marina, which is being funded in part by the California Department of Boating and Waterways.

Take advantage of proximity to downtown San Francisco by providing attractions for the general public, while respecting the needs of adjacent residents.

- Put out to bid and competitively selected a developer to construct two new restaurants at the southern end of Rincon Park near Harrison Street and The Embarcadero.
- Required the developer of the Bryant Street Pier Project to design a passenger terminal that took advantage of the terminal's unique location adjacent to downtown San Francisco, while also providing amenities and services for the residents of the South Beach/China Basin Subarea.

Create an integrated series of public access improvements that extend a shoreline PortWalk through the area, and provide a unifying pedestrian connection between South Beach and Mission Bay at China Basin Channel.

- Dedicated land and entered into agreements with the City for the construction of the \$60 million South Embarcadero Roadway Project, which included a pedestrian promenade along the entire waterfront edge, historic interpretive art signage program, Class II bicycle lanes, signalized intersections including pedestrian crosswalks and an extension of the Muni Metro Light Rail Line along the Embarcadero from downtown to the Caltrain Depot at 4th and King Streets.
 - Acquired land and leased to the China Basin Ballpark Company the site for Pacific Bell Park, a new 42,000-seat ballpark for the San Francisco Giants which provides a pedestrian walkway along the entire northern edge of the China Basin Channel.
 - Leased land to the San Francisco Redevelopment Agency for the construction of the \$2 million, 0.5-acre South Beach Park adjacent to and just north of Pacific Bell Park, including shoreline public access along the entire South Beach Marina.
 - Partially funded and assisted in the design of the China Basin Shoreline Park, a \$2 million facility that provides continuous public access along the southern edge of China Basin Channel from the Third Street Bridge to the Bay.
 - Exchanged land with Catellus Development Corporation that allowed for the construction of a continuous shoreline public access way along the south side of China Basin Channel from west of the Third Street Bridge to the end of Mission Creek.
 - Agreed with the Bay Conservation and Development Commission on an amendment to the San Francisco Waterfront Special Area Plan that provides for
1. The construction of the Brannan Street.
 2. The removal of approximately 155,000 square feet of deteriorated and condemned pile supported pier structures at Pier 34 and 36.
 3. The dedication of the newly created area south of Pier 30-32 as an "Open Water Basin," where only limited uses other than open water are allowed.

Establish high standards in the design of new development that give rise to a new architectural identity for the shoreline north of China Basin Channel.

- Adopted the Waterfront Design and Access Element, which calls for signature architecture for the design of the Cruise Terminal;
- Issued the Request for Qualifications and Proposals for the Bryant Street Pier Project that included Design Objectives: "Provide a high standard of architectural design which is appropriate to the prominence of the Site and which establishes a waterside architectural identity for the South Beach neighborhood."
- Began design development for Brannan Street Wharf project a major new open space in the South Beach neighborhood.

ATTACHMENT 2
DESCRIPTION OF PROJECT

*[capitalized terms are as defined in the Resolution 03-28 and the corresponding
Memorandum to Commissioners for this Item]*

Pier 30-32 - Mixed-Use/Cruise Terminal Program

The Pier 30-32 program includes a partial reconfiguration and structural upgrade of the Pier 30-32 structure, upon which would be constructed a new cruise terminal, a series of retail and office buildings, 425 parking spaces, and accessory open spaces. A berthing area for boats also would be constructed adjacent to the pier. This development would include a collection of buildings of varying sizes constructed on the pier deck and oriented around a central lagoon. The elements of this component are as follows:

- Cruise Terminal: Construction of the new James R. Herman International Cruise Terminal, a two-level, approximately 100,000 gross square-foot (gsf) structure that would serve as San Francisco's main terminal servicing cruise ships calling at the Port. Approximately 20,000-50,000 gsf of the terminal's space would be available to the public for civic and special events during the off-season, when ships are not in port. The terminal, to be located at the northeastern corner of the pier, would be primarily 40 feet tall, with an unoccupied architectural element of the terminal roof rising to a height of approximately 88 feet. The terminal would be served by an approximately 850-foot long berth along the pier's northern edge and a 1,000-foot long berth along the pier's eastern edge (created by a 365-foot long and maximum 50-foot wide southern extension of the existing pier). Maintenance dredging would be required to provide adequate depth at the northern berth; the eastern berth would require minimal maintenance dredging. The berths and terminal would be designed to accommodate two cruise ships simultaneously.

Passengers and visitors to the terminal would enter on the first level via an atrium on the building's southern side, then take escalators to the second level for ticketing and boarding. The terminal's ground level would be devoted primarily to terminal operations and ship servicing, while the second level would function as the primary public space and would offer expansive views of the bay through floor-to-ceiling north and east facing windows.

The new cruise terminal would be expected to serve 69 calls (approximately 80,000 distinct passengers) in its first year of operation, steadily increasing to about 107 calls (approximately 145,000 distinct passengers) by the year 2020.

- Retail/Entertainment: Approximately 195,000 gsf of retail/entertainment space would be situated throughout the pier, including a grocery store, restaurants, a multi-screen cinema and a variety of other retail spaces along either side of the pedestrian walkways and along the lagoon.
- Commercial Office: A total of approximately 370,000 gsf (325,000 net square feet) of office space for maritime and other private business would be provided on the second and third levels of the buildings on the pier, including part of the terminal building. The

buildings would be two and three stories in height, and the size and configuration of each of the floor plates would vary.

- Parking and Circulation: The vehicular access entry/exit point for the pier would be from The Embarcadero at its intersection with Bryant Street. This entry/exit would provide access to the four (4) story, 425 space parking garage, which would be situated immediately on the right side after entry. Further along the access road would be a taxi drop off point and also coach parking. The road would end with a turning circle at the southern end of the terminal. A total of nine truck loading spaces would be provided.
- Open Space/Public Access Amenities: The open space program for the pier would include plazas, terraces, aprons, and a lagoon. Landscaped terraces would be located on the second level, one to the south of the terminal near the eastern edge of the pier, one to the north of the terminal near the northern edge of the pier and one situated above the north end of the lagoon. As a result of design refinements made during the course of the ongoing review by the Waterfront Design Advisory Committee, these open space/public access features have been slightly modified from the description of these features in the FSEIR. Providing perimeter access to the entire pier would be 50-foot wide berthing aprons that would surround and extend beyond the terminal on the northern and eastern sides. The aprons would generally be open to the public, but would be closed for safety purposes when ships are in port. A large lagoon would be created near the center of the pier, creating a focal point from which most pier buildings would be oriented and have access. An apron/walkway of approximately 30 feet in width would surround the lagoon. This portion of the project would also have berths for water taxis, recreational boats, and possibly ferries and excursion vessels.
- Red's Java House: The existing Red's Java House restaurant would remain in the northwest corner of Pier 30-32.
- Pier Seismic and Structural Upgrade: Where required, the existing concrete piles would be repaired, which would involve the removal of marine growth and loose materials, installation of new reinforcing steel around the exterior of the pile, securing formwork around the pile, and then pumping of a cement-based grout (from a machine on the pier deck) into the formwork. Pieces of the pier deck would be removed to create the lagoon and to allow for the installation of new piles. New concrete piles would be driven for the pier extension. A new concrete deck would be installed atop the existing deck and on a timber and steel formwork for the pier extension. No net increase in the water area covered by pile-supported structures would occur.

Seawall Lot 330 - Residential Program

The Condo Site would be sold to SFCT for development of the Condo Project as described below. The Port would retain ownership of the balance of SWL 330 for future development. The Condo Project would include the construction of approximately 140 condominium units, with approximately 140 parking spaces, located in three levels above grade. Entry to the parking garage would remain on Beale Street. The main entry to the building would be on the first level. The building would be 22 stories and 220-feet tall. The building would contain communal facilities, including a swimming pool, concierge and gym, with common open space at the podium level. In order to enhance the residential nature of the project and

the pedestrian frontage, staff of the Planning Department have requested that the Condo Project be serviced by on-street loading, and that an off-street loading bay not be included in plans for the Condo Project. SFCT will undertake an interim perimeter landscaping plan for the balance of SWL 330. This will allow the remainder lot to continue as a revenue-generating parking lot. SFCT will have the right to use a small portion of the balance of SWL 330 for construction staging (for which it will pay to the Port the then current market rental value per square foot).

Brannan Street Wharf Project

The Brannan Street Wharf would involve removal of Pier 36 (91,845 sq. ft.), located immediately to the south of Pier 30-32, removal or repair of portions of marginal wharf and construction of new pile supported wharf area to create the Brannan Street Wharf. The Brannan Street Wharf would be approximately 600 feet long (parallel to The Embarcadero) and 95 feet wide. As called for in the BCD's *San Francisco Waterfront Special Area Plan* (July, 2000) and the Port's Waterfront Plan (as amended July, 2000), the Brannan Street Wharf would be at least 57,000 square feet.

The Brannan Street Wharf would provide a major public open space that would reflect the character and needs of the adjacent South Beach neighborhood and provide access to the waterfront for residents and visitors to the area, establish a unique activity center, provide a respite from adjacent intensively developed areas, accommodate a variety of passive recreational activities, and serve as both a local and regional destination. Under the LDDA, SFCT would construct the Brannan Street Wharf.

DOCUMENTS DEPT.

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**SAN FRANCISCO
PORT COMMISSION**

**MARCH 25, 2003
MINUTES OF THE REGULAR MEETING**

MEMBERS, PORT COMMISSION

HON. MICHAEL HARDEMAN, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. DENISE McCARTHY
HON. BRIAN McWILLIAMS

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO

PORT COMMISSION

MINUTES OF THE REGULAR MEETING MARCH 25, 2003

1. ROLL CALL

Commission President Michael Hardeman called the meeting to order at 4:05 p.m. The following Commissioners were present: Michael Hardeman, Kimberly Brandon, Denise McCarthy and Brian McWilliams.

2. APPROVAL OF MINUTES - March 11, 2003 Regular Meeting

ACTION: Commissioner McWilliams moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; the minutes of the March 11, 2003 meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report

Mr. Wong reported that since our country entered into war with Iraq, the Department of Homeland Security has raised the terrorist threat advisory level to "Orange." An Orange threat level indicates a high risk of terrorist attack against the United States. The Port is a participant in the Mayor's Office of Emergency Services - Security Crisis Action Team. Working closely with the San Francisco Police Department, the U.S. Coast Guard and other government agencies, the Port has been very involved in Homeland Security preparedness to ensure the safety of people and facilities along the waterfront. Mayor Willie Brown has directed that all City departments and agencies continue to provide normal services to its citizens, consistent with individual department security guidelines. All departments and agencies must be prepared to respond as necessary under the City Emergency Operations Plan. Port staff has also been working with the Police Department along our waterfront. They have been using Port property at Pier 27, Pier 30-32 and Pier 24 for police business.

The Ferry Building opened last Friday. The response from people walking through the building has been very positive. Staff is working closely with the developer to issue all the permits necessary to begin the tenant improvement work. The developer notified Port staff that 80% of the ground floor space and 60% of the office space have been leased. A lot of the tenants are new to San Francisco. The farmer's market is slated to open on April 26.

4. CONSENT

- A. Request for approval for the installation of two trees, which are part of a Public Art Project for Warm Water Cove Park. (Resolution No. 03-20)

ACTION: Commissioner McCarthy moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 03-20 was adopted.

5. REAL ESTATE

- A. Authorization to approve the Exclusive Right to Negotiate for the Pier 28-½ Restaurant Opportunity. (Resolution No. 03-21)

Jeff Bauer, Senior Commercial Lease Manager, presented the item and requested the Commission to authorize staff to enter into negotiations with John Cain, AKA Teamwork, for the renovation of a restaurant at Pier 28-½.

ACTION: Commissioner McCarthy moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 03-21 was adopted.

6. ENGINEERING & MAINTENANCE

- A. Request for approval to advertise for Competitive Bids for the 2003-2005 Maintenance Dredging Construction Contract. (Resolution No. 03-22)

Jay Ach, Regulatory and Environmental Affairs Manager, presented the item and requested the Commission to authorize staff to advertise for competitive bids for the Maintenance Dredging Project. This project provides for dredging at sites on the San Francisco waterfront from 2003 to 2005.

ACTION: Commissioner Brandon moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 03-22 was adopted.

- B. Request for Authorization to Award Construction Contract No. 2679 "Downtown Ferry Terminal Public Pier" to Dutra Construction Inc. (Resolution No. 03-23)

Mojgan Yousefkhani, Project Manager, presented the item and requested the Commission to authorize the award of Contract No. 2679 to Dutra Construction, Inc. and authorize the Executive Director to accept the work upon its completion.

Commissioner McCarthy noticed that Dutra's bid was much lower than the other bidders. She inquired if Dutra's projects at the Port have always been on budget. Ms. Yousefkhani replied that the Port has never had any problems with Dutra. She explained that the gaps in the bids are due to the fact that the other companies are new to the business. Dutra has been in the business for at least 50 years and has a lot of experience in doing this type of work.

ACTION: Commissioner Brandon moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 03-23 was adopted.

7. MARITIME

- A. Request for approval of the amendment to Port Commission Resolution 03-11, Emergency Contract with Titan Maritime, LLC, from original amount of \$1,172,000 to

the revised amount of \$1,213,098. (Resolution No. 03-24)

Mr. Peter Dailey, Maritime Director, presented the item and requested the Commission to authorize and ratify the Port's emergency contract with Titan Maritime, LLC, in the revised amount not to exceed \$1,213,098, for the salvage and recovery operations for Drydock #1.

Commissioner McCarthy inquired about Titan Maritime's scope of work and what the payment of \$1,213,098 represents. Mr. Dailey replied that under the emergency contract, Titan Maritime mobilized a staff of maritime divers, welders and workers to keep the drydock afloat, affixed temporary repairs to the drydock, and provided insurance to the Port for its recovery and removal. They removed the drydock, hired tugboats, surveyors and pilots to move it to a safe harbor. The amount represents complete removal and recovery cost incurred with Drydock No. 1. Staff has reviewed the invoices carefully and thoroughly. Titan Maritime is the best company to do this type of work and they were successful during the emergency situation. Staff is working to put together a Request for Invitation of Proposal for the ultimate disposal of Drydock No. 1.

ACTION: Commissioner McCarthy moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 03-24 was adopted.

B. Request for authorization of Executive Director, or his designee, to negotiate and enter into the proposed Fourth Amendment to Lease with San Francisco Drydock, Inc. at Pier 70. (Resolution No. 03-25)

Mr. Peter Dailey, Maritime Director, presented the item and requested Commission's approval of the proposed restructuring of the lease and authorize the Executive Director or his designee, to negotiate and enter into a Fourth Amendment to the lease with San Francisco Drydock, Inc. Mr. Gerry Roybal presented the terms of the lease and requested Commission's approval.

Commissioner Brandon inquired about the list of mutually identified undertaking by both parties. Mr. Roybal replied that a list has not been prepared as of yet. Conceptually, one of the items they are discussing is the improved road accessibility to the shipyard. The main entrance is currently located at 20th Street which runs through the middle of the proposed opportunity area and it's not going to be a good mix of traffic and pedestrian access in the future. They are proposing to change the road access to come along the backside of 22nd Street. They are also looking at using one of the existing buildings or the new building 19 that will be annexed for future office space to build a multi-story facility. Since the Loma Prieta earthquake, the administration building was condemned. The tenant has been paying for and using mobile trailers. One of the goals of attaining greater efficiency is to move them into an office building and use that space for laydown area and access to the drydocks. Another important undertaking would be the expansion of Drydock #2, the Port's largest drydock and the largest floating drydock on America's Western Hemisphere. With this asset, if Drydock #2 is lengthened, stabilized and allowed to have greater lift capability, the Port would be able to accommodate post-Panama ships which the Port cannot currently handle. This would allow SFD the ability to penetrate and concur the big ship market and attain revenues that are currently unreachable to them. Another undertaking would be the construction of new facilities to better handle the blast

remediation and the machining functions at the unreinforced masonry building (UMB) Bldg. 113. With the establishment of the Capital Improvement fund, the Port would be able to build better facilities or equip existing facilities to accommodate the larger machining functions that will be moved out of Building 113.

Commissioner Brandon asked who is authorized to release the funds once the fund is established. Mr. Roybal replied that the Executive Director is authorized to release of funds.

Mr. Dailey indicated that the Port had a similar disbursement of funds for infrastructure improvement that was maintained by the Port and was released through the Executive Director's authorization. The list of infrastructure improvements that would benefit the ship repair yard and the Port when the list expires is being formulated. The highlight of that project is the enhancement of the drydock which will potentially enhance our capability to market the facility. From a control standpoint, staff holds the money and writes the check with the Executive Director's authorization.

Commissioner McCarthy asked about the expiration of the lease. Mr. Roybal replied that the original Lease L-11320 is a 30-year lease which commenced in 1987 and will expire in 2017. The original list grants the tenant the right to re-examine or renegotiate the rent structure on the fifth anniversary date. This proposal will cover the Port in the next five-year period.

Joe O'Rourke, President & General Manager of San Francisco Drydock, indicated that he has a 15-year experience in the ship repair industry. He thanked the Commissioners and its representatives for the work that they have done. The Port of San Francisco's support of the ship repair industry is unparalleled. Ship repair provides a lot of jobs to minorities. For the first time in over 15 years, there some opportunities for growth. This has been an industry that continue to shrink. This industry provides hundreds of maritime jobs. It's one of the few industries that has a strong working relationship between the union and business. They have survived the downturn and are finally on their way back up. This lease deal shows some generosity and support by the Port. It allows them to build the future in San Francisco for ship repair. It is an industry that deserves to survive. It now looks like they will have opportunities to train and get the new generation back in this industry. He expressed his appreciation for the support of Port staff. It was a hard negotiation but it will give them the opportunity to turn the corner and move to the future.

ACTION: Commissioner McCarthy moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 03-25 was adopted.

8. PLANNING & DEVELOPMENT

- A. Request for authorization to negotiate an Exclusive Right to Negotiate (ERN) Agreement with the International Museum of Women (IMOW) for the development and long-term lease of Pier 26 located on The Embarcadero between Harrison & Bryant Streets. (Resolution No. 03-26).

Kari Kilstrom, Planning & Development, presented the item and requested the Commission to authorize the Executive Director or his designee to negotiate and ERN

with IMOW. After the ERN has been negotiated with terms including performance benchmarks that are acceptable to Port staff and the IMOW, Port staff will submit the ERN to the Port Commission for its review and approval, seeking its authorization for the Port to enter into the ERN.

Elizabeth Colton, IMOW, indicated that they are excited to begin the partnership with the Port and the City to build the new museum. They are going to build a major cultural and educational facility. In addition to being a museum and cultural facility, it will be a center for women and men to come together to honor women's contributions to history. It will be a center for knowledge and dialog and continued change for women. It will be a place to foster understanding between cultures and the peoples of the world. They are excited to build in San Francisco as it is an international City. It is a City that supports and celebrates diversity. It is a City where the UN was founded. It is a City that prides itself in being a leader in social justice movements. They are ready to build this museum. They have spent the last several years in the planning. They have done market studies and business plans. They have done conceptual planning with both scholars and architects. They have done workshops on technology planning and education planning. They started looking at how to create a sustainable design for this museum. They have built support locally, nationally and internationally. They have started the process of fundraising. To date, they have raised over \$1.5 million and have just received a half a million dollar challenge grant from the Tides Foundation. They have been to Washington D.C. to start the process of looking for federal money in partnership with the Port. They hired a nationally recognized capital campaign firm. They are ready for the challenge. They have opened their first exhibit in the Bay Area. It is a very powerful and moving experience. It is not only an exhibit of art from around the world that represents images of women but it also has a very developed education program and train docents and it represents the kind of work that they will do as a museum. The museum will bring great pride to the City. The City will be the first place in the world to make this kind of commitment to women worldwide in honor of their contributions and in honor of their history. They are excited to start the process.

Carrie Schwab Pomerantz, President of the Charles Schwab Corporation Foundation, indicated that she is passionate about helping women gain economic parity from a non-profit standpoint but also from Schwab's commitment to help women become financially successful. This museum is near and dear to her heart. Schwab is also a proud sponsor of its first exhibit, Women of the World. This is an extension of what Schwab is all about i.e. breaking barriers to achieve success.. She represents the corporate community. Schwab and First Data were the primary sponsors of this exhibit. Schwab is headquartered in San Francisco and First Data is headquartered in Omaha, Nebraska. This is indicative of the corporate support this museum will receive nationally. San Francisco is a world class City and Schwab is all about supporting the communities and helping San Francisco to continue to be that world class leader. This is a City about diversity, about innovation and inclusiveness. As a woman in the corporate world, she has seen how important it is to support mentorship for women and to provide more role models and leadership models for women. This museum will certainly provide that. As a parent, she will be proud to visit the museum on a regular basis and showcase what women's roles have been in our society.

Sue Bierman, IMOW, indicated that Elizabeth Colton and the people working with her are really on to what the Commission is all about, finding uses for some of the buildings that

are not needed for maritime but in this particular case will bring people from all over the world. The exhibit showed what people would see if they visit the museum. Cultural things on the waterfront will draw people to the Port. She worked long and hard to get the organ across the street from the museum. It will enliven the area for many years to come. She is proud of Elizabeth Colton for bringing this beautiful idea. She and the people working with her will do a great job.

Cleopatra Vaughns, National President of the National Association of Negro Business and Professional Women's Club Incorporated, an organization of more than 10,000 women across United States, Africa and the Caribbean, asked the Commission to approve and support Resolution 03-26. They are euphoric to partner with the IMOW because their mission is to promote and protect the interest of women and businesses. They are proud to be part of this project. Ms. Vaughns indicated that as the first and the only woman elected to the chairship of the San Francisco Convention and Visitors Bureau, the project of the IMOW in San Francisco will add significantly to the marketing effort of the SFCVB as well as enhance its revenue and database. It is with that thrust, that she asked the Commission to pass the resolution as it will be the best thing that's ever happened to San Francisco absent our Mayor.

Roberta Jacobs, Corporate Chair of the Fundraising for the IMOW and former senior executive, echoed her colleagues in their statements of confidence that they have and will continue to enjoy broad based financial support from corporate America. As evidenced by the fact that even before securing the site and even before beginning the capital campaign, they have had a secured financial support from world class corporation such as Schwab and First Data Corporation. First Data Corporation is not a Bay Area company but headquartered in Omaha, Nebraska. She is a major fan of San Francisco, having specifically chosen to relocate in the City to raise her daughter after adopting her from China. She chose San Francisco for the very same qualities that support the mission of the museum for where else in the world can we live in such a beautiful, international and diverse City with such a strong sense of historical place and value. The most important reason why she's dedicating a lot of effort and commitment to fundraising for the museum is where else can she take her daughter to educate, to frame and to realize not only her own international history and legacy but her place in history. Women have been around for half their world's history and to date, only a few museums touch on the history of women and then only segments of it and then only American women. Nowhere is there a museum to explain women's unique life experiences, their struggles, their accomplishments and their contributions on the international stage. The world has clearly moved beyond national, regional issues and it's time for the museums to evolve as well. While San Francisco is a leader in internationally oriented museums, San Francisco is more than international, it is world class. There is no better place, for such a world class museum as the International Museum of Women, but San Francisco.

Andrea Shorter, Board of Director of IMOW, was thrilled beyond belief that they are at this point where they can start a formidable partnership to make this particular vision come true. As a Commissioner on the Commission of Status of Women, they are very delighted at the idea of a museum and its prospect of being in the City of San Francisco. A number of things have been said in terms of the various types of partnership that are being established not only locally but also around the country and international to make this idea come true. The value of the museum as an educational center is also another type of

partnership that they want to address. Over the last few years, they have been working with a number of young women that are very excited about this venture. They are already talking about what this is going to mean to their daughters and to their sons and what it's going to mean to their daughters and to their sons. One of the women expressed that this is a 21st century idea whose time has definitely come but is long overdue. They are very much in anticipation of this particular project. They have also been in dialog with various educators not only in university settings but also in the elementary, middle school, high school settings, talking with teachers and students. Clearly, they understand and grasp the meaning of this particular project and what it's going to mean in their actual formal curricula but also in terms of being able to encourage students and parents to participate in what the museum has to offer. This is one of the most engaging projects that we will see not only in the Bay Area but also in the international community. Not only does it lift the esteem of all of us as San Franciscans but it lifts the esteem of all humanity when we have a place that we can come together and explore some of the critical issues facing us on a daily basis that may divide us but as a place, a forum that brings us together and improves not only the quality of life in San Francisco and improves our dialog and our quality of life together around the world. She urged the Commission to pass this resolution and looked forward to working in partnership with the Port.

Commissioner Brandon commented that this is wonderful and exciting project and looks forward to the final negotiations and to the groundbreaking.

ACTION: Commissioner Brandon moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution No. 03-26 was adopted.

- B. (1) Request for adoption of findings, including a statement of overriding considerations and adoption of a mitigation and monitoring program, pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines in connection with the proposed Mixed-use Cruise Terminal Project located on Piers 30-32, the sale of property located on a portion of Seawall Lot 330 at the corner of Bryant and Beale Streets for a condominium project, and a public open space project referred to as the Brannan Street Wharf in the location of Piers 34 and 36 (Resolution No.03-27).
- (2) Request for approval of the following documents and actions in connection with the development of a Mixed-Use Cruise Terminal Project located on Piers 30-32, the sale of property located on a portion of Seawall Lot 330 for development of a condominium project, and development of a public open space project referred to as the Brannan Street Wharf in the location of Piers 34 and 36 (Resolution No. 03-28):
- (a) Approval of a Lease Disposition and Development Agreement governing disposition and development of the Mixed-Use Cruise Terminal Project at Piers 30-32, and development of the Brannan Street Wharf;
 - (b) Approval of a Lease with San Francisco Cruise Terminal, LLC for a 66-year lease of Piers 30-32 for use as a Mixed-Use Cruise Terminal Project;
 - (c) Approval of a Purchase and Sale Agreement governing the sale to San Francisco Cruise Terminal, LLC of approximately 22,000 square feet of property located at the corner of Beale and Bryant Streets on Seawall Lot 330;
 - (d) Adopting findings authorizing the lifting of the public trust from approximately 22,000 square feet of property located at the corner of Beale and Bryant Streets on

- Seawall Lot 330, subject to approval by the State Lands Commission;
- (e) Declaration of Policy regarding timing of construction of Brannan Street Wharf; and
 - (f) Declaration of Policy regarding future development of the remainder of Seawall Lot 330.

John Doll, Planning & Development, presented the item and requested Commission's adoption of the CEQA findings and approval of the documents.

Mr. Doll introduced Maurice Coccacia from Lend Lease and Peter Strauss from Muni. The issue with Muni has to do with the appropriate share of cost from the impact of this project. Port staff will negotiate with Muni to determine the fair share and the appropriate cost. This issue is anticipated to be worked out prior to this project going to the Board of Supervisors.

Maurice Coccacia, Vice President of Lend Lease Development and the managing representative for SFCT, indicated that the documents before the Commission are the culmination of three years of work by SFCT and Port staffs. It has been a long road but they are proud of the relationship with Port staff and proud of the ultimate result they have achieved. These documents reflect a true private/public partnership and established a framework for successful development for all stakeholders. The commercial proposal outlined by Mr. Doll was the direct result of a number of factors. They have undertaken an exhaustive environmental review process with the Planning Department which involved the community, environmental groups, interested parties and through the appeal process, the Board of Supervisors. This effort has resulted in the final SEIR approved in January 2003. The project's specific legislation, AB 1389, enacted in the fall of 2001 has been reflected in all of the contract documents. They have had ongoing consultation and input from the community. In particular, they have worked very closely with the Rincon Point South Beach CAC in finalizing the provisions of the agreement. He trusts that the Commission finds the parameters of the documents satisfactory. He asked the Commission to approve the two resolutions and allow this major piece of the Port's waterfront become a reality.

Peter Strauss, Manager of Service Planning for Muni, looked forward to the completion of this project. Muni has contributed a lot of projects to the vitality of the waterfront in the last several years; most notably, the extension of the Metro service, the M-Line along the south Embarcadero and the extension of the F-Market and Wharf street car service along the north Embarcadero. They have also began the initial work on the project that the Port has long endorsed i.e. the creation of an additional E-Embarcadero street car linking the south and the north Embarcadero with historic street cars. The Brannan Street Pier project will contribute to an excess of demand over supply in terms of transit service. They look forward to working with Port staff to mitigate those impacts and they hope that it will be done to support the Embarcadero Street car service. He then read a letter from Michael Burns, Executive Director of Muni, to Mr. Wong, Executive Director of the Port.

Byron Rhett, Planning & Development Director, acknowledged all the Port staff who worked on this project. This process began in early 1999. This is a very complicated project and it involves all the departments within the Port: maritime, real estate, finance, legal, engineering and maintenance. He thanked Paul Osmundson, Anne Cook, Kirk Bennett, John Doll, Jesse Blout (Mayor's office), and Neil Sekhri.

Paul Osmundson, Presidio Trust, congratulated everybody. This project goes way back to the late 1980s when Jimmy Herman was on the Commission. He congratulated the Port Commission for selecting SFCT because they have stuck with the project through difficult times. The project reflects an incredible evolution that is going to be a significant piece of the waterfront redevelopment. He congratulated Port staff for working so hard. He urged the Commission to approve the project.

Steve Reilly, Red's Java House, indicated that during the past few years, Red's has formed a very good working relationship with Lend Lease and are currently working with them on some concepts for the northwest corner of Pier 30 and will remain actively involved in this process. They fully support the project and urged the Commission to approve the resolutions.

Robert Zurcher, Carpenter's Union Local 22, indicated that this project looks great. Unfortunately, they have a little bit of issue to the extent that Bovis is involved in this project. Local 22 represents 40,000+ carpenters and retirees throughout Northern California. While they might have issues with Bovis, they are very concerned that those issues might spill over onto the project in San Francisco. They don't desire that to happen because they realize the crucial nature of this project. He wanted to make sure that the Commission and the public are aware of the situation.

Randy Zurcher, Bluewater Network, indicated that in reviewing the revised EIR and the mitigation measures, they did a good job on the water discharge pollution mitigation measures. However, he recommended to go one step farther and think about where the waste is going to be treated e.g. a reception facility for the waste water for the cruise ships so they can treat the water. It should be set up in a way that the cruise lines could pay for it instead of San Francisco. This would keep them from holding their wastewater until they get back out into the bay where they can dump raw sewage. He mentioned that Bluewater Network did appeal the first EIR. To a certain degree, their concerns were addressed and were given some assurances. As far as the air quality mitigation measures, he found out that an advisory committee was established. When it comes to reducing pollution from cruise ships, there is no need for an advisory committee. The cruise ships should not be allowed to run their diesel engines while they are in port. While they are in port, the air pollution they are emitting in the air equals to thousands of cars a day. They would like to see the cruise ships to have a shoreside power hookup while they are in port. The additional cost would be small compared to the cost of overall electrical facilities and to the overall project. It would be cheaper to do it now than retrofit it later. Standard PG&E electric extensions tariff would apply and help offset the additional cost of electrical facilities for the cruise ship. Shoreside power for ships is covered under the Carl Moyer Program, which is a State funding mechanism for reducing emissions from diesel engines. The Dept. of Environment may be interested in helping build electrical generation capacity that would offset the extra load of shoreside power. PG&E has a number of energy conservation programs that can significantly reduce loads on new building construction and they would be happy to work with the Port on the project. The City of San Francisco has a Green Building Ordinance that applies to the cruise terminal and it makes energy efficiency and environmental responsibility possible. He encouraged the Port to focus more on the air pollution from the ships.

Tim Kazarian, Local 38 Plumbers & Pipe Fitters and President of the Bay City Metal Trades Division, indicated that they are in favor of this project. He complimented Mr. Doll for his presentation and the people who worked on this project. This project would beautify San Francisco. The men and women of construction trades and metal trades need this project. San Francisco needs this project. It will bring revenue that the City deeply needs. San Francisco is a union town and he hopes that it is not tainted by the contractor that Mr. Zurcher commented about. He knows that the Port will do everything it can to make this a successful project.

El St. John, San Franciscans for a Healthy Waterfront, agreed with Supervisor Bierman's comments regarding beautiful and clean piers. They support the cruise terminal with mitigation and monitoring changes that have been designed by Bluewater, Oceana and San Franciscans for a Healthy Waterfront. They support all of that with the caveat of no dumping. They think that all the mitigation measures in the lease and in the SEIR should be stronger. Because they have not been mitigated properly, the terminal is in the wrong place. Environmentally, mitigation and monitoring is virtually impossible at Pier 30 compared to Pier 27 or Pier 48 where plugging into the electrical grid would mitigate these issues and earn fees for use of all those utilities. Building a terminal at Pier 48 would cost less than half and it would be built quickly. There would be no shopping mall on the terminal but it would be built across the street and earn money for San Francisco right away. Alaska, Los Angeles and Monterey own their cruise terminal; they have more control and more compliance and civil enforcement without conflict. She would not like diesel particulate coming in from the Bridge right down to the pier. She would like them to use low sulfur diesel and put new things. They can afford it since they don't pay any taxes. We have to be accountable; otherwise, we face lawsuits. If we mitigate these things now, we will not run into problems. If the cruise terminal is built some place else, the USS Iowa or a maritime museum could be located at Pier 30/32. It would not be difficult to build, it would not cost a lot of money and it would not take too much retrofitting.

Earl Gee, San Franciscans for a Healthy Waterfront, strongly urged the Commission to take responsibility for the lease they are reviewing by demonstrating a commitment to accountability for air, water, traffic, and mitigation measures recommended by nationally respected environmental organizations such as Bluewater Network and Oceana. The air and water quality reviewing bodies must have equal representation by cruise terminal operators and effective parties. Standards must be set which require the cruise terminal to cease operation if agreed upon air and water quality mitigation measures are not complied with to the fullest extent by the cruise terminal operator and the cruise lines responsible for the impacts. It is not sufficient to merely implement mitigation measures. The mitigation must be monitored and reviewed to determine their effectiveness in order to provide real, verifiable results. To fail to implement proper mitigation, enforcement and accountability would only demonstrate an unwillingness of the Port and the cruise terminal operator to work with the community in which the project directly impacts. It would be remiss if we did not learn from the environmental pitfalls evidenced in Juneau, Alaska; Vancouver, British Columbia; Seattle, Washington; Monterey, CA and Portland, Maine. These ports have become examples for the critical need for accountability of cruise terminal operations precisely because of the cruise ship industry's documented habitual and blatant violations of agreed upon environmental standards. They trust that the Port Commission is as committed to preserving what we have for future generations as they are. He asked the Commission to use their authority wisely to strengthen the mitigation

and enforcement of air, water and traffic impacts to provide the accountability that San Francisco deserves.

Mohammed Razak, San Francisco Drydock employee, gave his support of the project and recommended that the Commission approve the project.

Rory Miller, San Francisco Drydock employee, gave his support of the cruise ship terminal project.

Eddie Gomez, San Francisco Drydock employee, gave his support of the project.

Jim Vaught, San Francisco Drydock foreman, indicated that the cruise terminal is important to the City not only for the revenue it will generate but for the increase in jobs that it will provide. San Francisco has always been a leader in innovation and this will keep us ahead of everybody else. This will give the cruise line an option. This is an important project to the community and to local families, especially to the minorities. He urged the Commission to approve the project.

Steve Lambert, San Francisco Drydock employee, indicated that this cruise terminal will bring 150-200 employees a day to the drydock. He supports the project not only for the shipyard workers but for the revenue it will bring to the City.

Tim Eichenberg, Oceana, indicated that Oceana supports the sustainable cruise ship industry. Cruise ships, however, are exempt from the permitting requirements and Clean Water Act and exempt from requirements that treat gray water discharges and ballast water discharges and also exempt from provisions of the Clean Air Act that allow them to emit diesel emissions that far exceeds the State requirements for diesel trucks and automobiles. They support the provisions in the lease and the mitigation measures that would ban discharges into the bay. They also urged that the Commission adopt additional mitigation measures as suggested by the Board of Supervisors to require that shoreside power and sewer connections be provided in the construction of the project. The mitigation measures should require the use of low sulfur fuel; it would make a tremendous improvement in the air quality in the San Francisco Bay Area with very little difficulty for the cruise line industry. He suggested that the Port strengthen the monitoring reporting and enforcement requirements of mitigation measures. It is very difficult to enforce a lot of the requirements of the cruise ships unless there is adequate reporting of all the discharges and monitoring of the discharges. There is no assurance that they are not discharging in the bay. He wanted to make sure that the Port gets good solid reporting requirements.

Tryg Morkemo, San Francisco Shipping, indicated that the cruise ship industry is looking at San Francisco for a better facility. A new terminal is definitely needed in the City and he strongly supports the project.

Catharine Hooper, Port agent, indicated that a Port agent is appointed by a cruise line and pay them to do their work if they don't have an office here. She asked why a world class City like San Francisco in one of the world's most magnificent ports in the world need a world class terminal. She invited the public to visit a ship sometime at Pier 35 and it will answer their questions. When a cruise line decides to base a ship at the Port, it is not

driven by what the cruise line wants but it is driven by what the passengers want. The most magnificent ports in the world are Hong Kong, Sydney, Rio de Janeiro and San Francisco. The passengers decide where the ships are going to go. As a Port agent, she is paid by these lines to spend their money to operate a turnaround of a vessel or a call of a vessel. She will spend \$180,000 on a turnaround as she did last Wednesday when the Oriana, a British ship, called on this port. The Port needs a world class terminal purely for economics and civic reasons. You can put a price tag on the economic benefit but it is hard to put a dollar amount on the civic benefit to having a world class terminal. Oriana came in at 6 in the morning and left at 6 at night. She spent \$180,000 of the cruise lines money. Her company looks after 75% of the cruise ships that call at this Port. Two of them, Crystal Cruises and Princess Cruises, have based ships in the past few years as they will this summer. Crystal Harmony alone will spend an average of \$130,000 in 8 hours in this ship. Regal Princess will spend more because she a bigger ship and carries more passengers. The Aurora was a maiden call at the Port that spent two days at the port three years ago. She wrote checks in the amount of \$600,000 for that call. It's not just cruise ships that will be coming to the Port but U.S. Navy vessels, tall ships and private ships will use the facility as well. Labor benefits and the jobs that she will retain on behalf of the cruise ships are union longshoremen and women, union guards, union clerks, union mechanics, inland boatmen and San Francisco Drydock and the maritime community such as tugboats, barges, bunker and lube suppliers, pilots, terminal management, San Francisco Drydock, ship chandlery, and Port agents. There are also a lot of crew related costs. The crew get vacations from time to time. When they fly in, they fly them in from overseas and they need hotels, they need Tryg Morkemo's company to pick them up at the airport, clear them through customs and immigration. Cruise lines pay for those services in cash. Crews have teeth and they need to see a dentist or a doctor from time to time. Crew have money and love to spend money and Union Square and Fisherman's Wharf benefit tremendously. The tourist segment also benefits from the cruise ship. Her company booked 814 rooms last year just for crew alone in the amount of \$97,000. US Navy uses hotels. They commissioned a destroyer last year. They booked hotels for the family and friends; 700 room nights for \$98,000. Airlines benefit as well. Retail and parking, vendors and suppliers, all the food that comes on the ship comes in from local suppliers in San Francisco, brokers, truckers, utilities, San Francisco water district, public works, Muni, sewage and they book cruise ships into the San Francisco sewer system under the guidance of the Public Utilities Commission. Oriana was here and she will get a bill from the Port in the amount of \$17,750 on the head taxes. City and County of San Francisco will receive unsecured property taxes. Hospitals, retails, Fisherman's Wharf, restaurants, valet car parkers, ten police officers, ping pong vendors will be utilized. On a micro scale, South Beach will benefit by having all the facilities at this multi-use facility. She has been in the industry for 35 years and is passionate about the industry. It would give her no greater pleasure than to be alive when this terminal is finished.

Carlos Afre, You and Leisure Travel, congratulated the Port on this project. San Francisco is a world class City and deserves a world class cruise terminal.

Jeffrey Leibovitz, Rincon Point-South Beach, CAC, thanked the Commission, Port staff, and Kevin Shelly's office for writing the very important legislation for allowing neighborhood retail service across the street on Port property. He thanked SFCT for working with their CAC, for accelerating and severing the Brannan Street Wharf from the legislation. The City will get 70,000 s.f. of public plaza on the waterfront; a major asset to

San Francisco. He endorsed the recommendations by the CAC particularly about the development for the remainder of the Seawall Lot. Unfortunately, Lend Lease would not be the developer for that property because they will do a magnificent job. They would like the CAC to be part of that development. CAC has gone a long way to make it a very integrated part of South Beach. He reminded the Commission that the Planning Commission unanimously approved the EIR and the Board of Supervisors, upon appeal, unanimously approved the EIR as well.

Rick Dickerson, Rincon Point-South Beach CAC Chair, on behalf of the CAC, voiced their continued support for the cruise terminal. They have been involved in the planning process for a long time. They have been involved with Port staff and the developer in recommending some changes to the time lines and the deal. They were pleased that their recommendations were all taken into account by Port staff and the developer in the final project. The neighborhood is very pleased that the time table for the Brannan Street Wharf project has been accelerated. They would like to see it done as soon as possible if funds are available. He urged the Commission to safeguard the profits from the condo tower for use on Pier 30/32 cruise terminal.

Michael Sweet, Rincon Point-South Beach CAC Vice Chair, indicated that the community is in support of this project. They worked very hard at the outset of the project to make sure that they had a developer at the negotiating table with the Port that would be responsive to community needs. South Beach is different and South Beach has a community feel that they want to maintain and enhance. They believe that Lend Lease would do a great job, not so much because of what they brought to the table in 1999 when they started making the presentations but because they listened to the community and took their comments and incorporated them into their plans. They continued to reach out to the community, a sign of someone with whom the community should be working with and the Port should be supporting. This process has been frustrating for the community because things keep changing. Decisions by State Lands, the City and the Port to change how SWL 330 would be dealt with, changed the whole dynamic of this project. Nevertheless, the community believe that this cruise terminal, when complete, will be a cornerstone to the newest, most vibrant neighborhood in the City. They will continue to support the project, they will continue to work with Lend Lease and encouraged the Commission to do all it can to move this project forward and to bring the community improvements that staff and Lend Lease have moved to the front of the agenda, the Brannan Street Wharf improvement on SWL 330 that won't include the condo building and other things that would help the community and be the payoff for the community for working with the developer to make sure that they get a project they can live with and work with. He thanked Port staff for all their hard work and to Lend Lease for sticking with them and they will continue to stick with them if they continue to do the right thing.

James Haas, Rincon Point-South Beach CAC, indicated that because things take so long in San Francisco, it's unfortunate that there are people who arrive at the end of the process who dislike the project. They don't give any respect to all of the process that led up to it. The Commission, because of their experience, can differentiate those people from people who understand and have been involved in the process. The documents before the Commission are not the approval of the design of the project but rather the business terms. There will be many more opportunities to deal with the environmental issues. Some of the environmentalists have the attitude that San Francisco should be the tail that wags the dog

of the cruise industry. Some of those issues need to be dealt with at the State level in conjunction with other cruise ports in California, if not throughout the United States. There will be plenty of time to coordinate those things. He has had the opportunity to visit the cruise terminal in Vancouver and it is a wonderful public amenity. This terminal with the Brannan Street Wharf is going to be an amazing public amenity for San Franciscans over and above all the economic concerns. All the work that has been done by staff and Lend Lease and the CAC over the years culminated in these documents and would be finished off with the other matters that will come to the Commission in the future. The Port will have a great project.

Marina Secchitano, Inland Boatmen Union, indicated that as James R. Herman's appointee on the Waterfront Advisory Committee, a vision without action is just a dream. Mr. Herman had a dream. He was delighted to be the champion of a continued maritime commerce at the Port. She is looking forward to that becoming a reality. She encouraged the Commission to approve the lease. The Port has worked very closely with environmental concerns and she is convinced that it will continue to do so. The Port needs to focus on the jobs. They cannot allow the Port to disappear because we cannot afford to maintain the piers. They are fighting everywhere they can to keep a sustainable maritime commerce. Mr. Herman worked desperately on this project. She was delighted that employees from the shipyard came to speak because people needs jobs, and not just about a pleasant place to see. This is a good blend of the community and the industrial use of the Port. The economic impact of this project to the City is tremendous. It would generate \$35 million in purchases of goods and services other than labor. It will account for more than \$2 million in State and local taxes. In order for the vision to become a reality, action is needed and she urged the Commission to approve the resolutions.

Harold Brinkley, ILWU Local 10, indicated that the cruise terminal project is important for the City, the Port and the maritime industry. The cruise industry in San Francisco currently provides an economic stimulus to the City of more than \$35 million by the direct purchase of goods and services for the ship, wages and benefits as well as tourism expenditure plus \$2 million in local and State taxes. Pier 35 is inadequate. It is expensive to operate and it has difficulty complying with the new security regulations. If it is not fixed immediately, we stand a good chance of losing the cruise business in San Francisco. The cruise industry in San Francisco operates 12 months a year. This new cruise terminal will be our field of dreams. It would mean jobs. It is the duty of San Francisco to step to the forefront in support of the cruise industry. San Francisco is known around the world as a magic city. We would be less than a City that what we are qualified to be if we don't open our Golden Gate by providing a better front door, the James R. Herman International Cruise Terminal.

Ernestine Weiss indicated that the City needs a clean and green port. She fears that the particulate from the cruise lines will wash over to their community and cause all kinds of diseases. It is easier to prevent it than to cure it so she asked the Commission to ensure that all the mitigation and monitoring measures are enforced.

Commissioner McCarthy asked if there is a difference between a regular permit and a major permit. Mr. Rick Cooper from the Planning Department explained that a major permit is an administrative permit which requires administrative hearing and requires a vote of the Commission.

Commissioner McCarthy was delighted that this complex project has finally reached this stage. It has been a very long process. She thanked staff for persevering throughout the entire process. SFCT was the right choice as the developer for this project. She looks forward to the completion of this project.

ACTION: Commissioner Brandon moved approval; Commissioner McWilliams seconded the motion. All of the Commissioners were in favor; Resolution Nos. 03-27 and 28 were adopted.

9. NEW BUSINESS/PUBLIC COMMENT

10. EXECUTIVE SESSION

- A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Brandon moved approval; Commissioner McCarthy seconded the motion. All of the Commissioners were in favor.

At 7:10 p.m., the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS (Discussion and Action Items)

- a. Discuss existing litigation matter pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):

- F. Alioto Company, Inc. et al. v. City & County of San Francisco, et al., S. F. Superior Court Case No. 318360, filed January 25, 2001.

- b. Discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (1 case as defendant).

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.

*This session is closed to any non-City/Port representative. **

- a. Property: Pier 27-31
Person Negotiating: Port: Byron Rhett, Planning & Development Director
*The Mills Corporation: Steven J. Jacobsen
- b. Property: Pier 80
Person Negotiating: Port: Peter Dailey, Maritime Director
*Marine Terminals Corporation: James Wiltshire

- c. Property: Piers 19/23
Person Negotiating: Port: Douglas F. Wong, Executive Director
*Big C Traders: Raymond Lynch
- d. Property: Seawall Lot 330
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Prospective Bidder(s)
- e. Property: Seawall Lot 352
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Specialty Crushing: Tom Chasm
- f. Property: Pier 3
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Hornblower Yachts: Terry MacRae
- g. Property: Seawall Lot 324 (Broadway & Drumm)
Person Negotiating: Port: Ken Winters, Director of Real Estate
*San Francisco Parking Company: Tim Leonoudakis

11. RECONVENE IN OPEN SESSION

At 8:48 p.m. the Commission withdrew from executive and reconvened in open session.

ACTION: Commissioner McWilliams moved approval to adjourn executive session and reconvene in open session; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner McWilliams moved approval to not disclose any information discussed in executive session; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner McWilliams moved approval to adjourn the meeting; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

12. ADJOURNMENT

The meeting was adjourned at 8:48 p.m.

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